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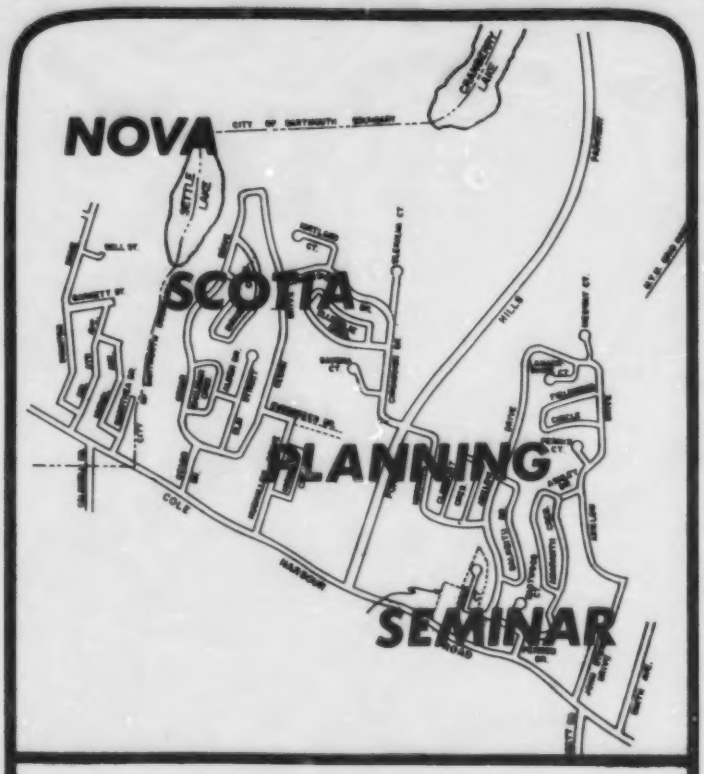

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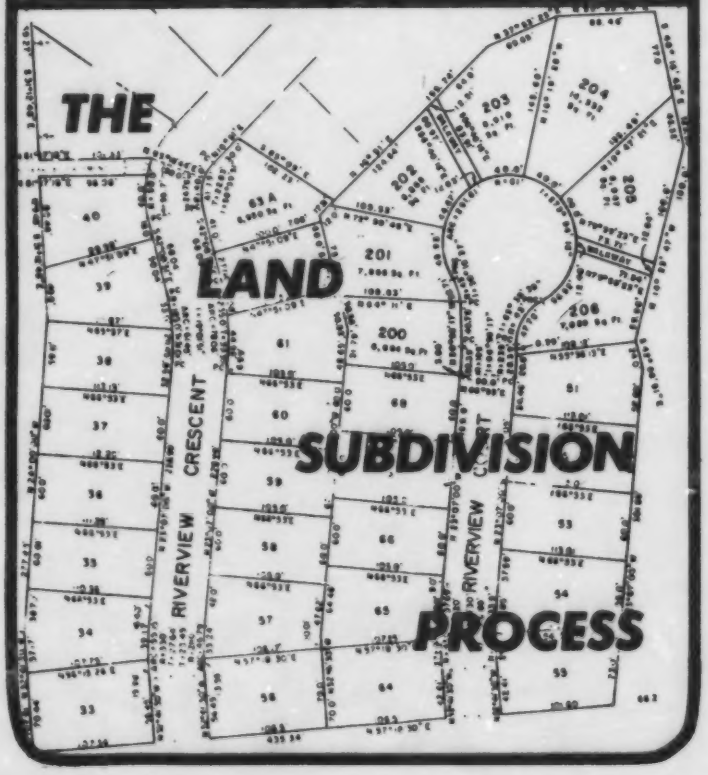

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Community Planning Division

February 23, 1979

To the reader:

The 1978 Nova Scotia Planning Seminar, held in Halifax on November 1-3, 1978, dealt with the Land Subdivision Process.

This year, approximately 150 delegates attended the Seminar. The delegates represented many government agencies and departments, consulting firms, private business, corporations and academic institutions. I hope that those who attended were pleased with the content of the various topics covered during the seminar sessions, and with the opportunity to meet and talk with representatives of other agencies.

If you attended last year, I hope you will consider returning this fall. If you were unable to attend, I hope these proceedings will make you consider attending our Nova Scotia Planning Seminar 1979.

Yours sincerely,

Maurice E. Lloyd
Director of Community Planning

HD 252

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OPENING REMARKS BY

HONOURABLE RONALD C. GIFFIN

MINISTER OF MUNICIPAL AFFAIRS

PROVINCE OF NOVA SCOTIA

TO

PLANNING SEMINAR '78

CITADEL INN, HALIFAX

WEDNESDAY, NOVEMBER 1, 1978

It gives me great pleasure to welcome you to the 1978 edition of the Nova Scotia Planning Seminar which this year is entitled "The Land Subdivision Process". I am sure that all participants, representing as they do, various aspects of the land development business, will find in the next two and one-half days an informative, stimulating and even enjoyable forum in which experiences and ideas on subdivision may be exchanged.

As Minister of Municipal Affairs, I am pleased that my Department is hosting this planning seminar and before going further, I would like to take a moment to thank everyone who has worked at putting together a seminar that I think is very important and one that will generate interest and stimulate discussion on the subdivision process. I know that the people from my own Department have put a great deal of effort into preparing for these sessions, especially Bob Russell, and have brought together a number of experts from Provincial and Municipal governments as well as from the private sector, which I think is very important, to get together and to exchange ideas and to learn from one another.

We are particularly fortunate in having some "outside experts" here with us today. Nigel Richardson is presently associated with the Hart Commission on the Northern environment. He will give us an overview of land subdivision in Ontario. Mr. Richardson has had considerable experience in Planning circles in Ontario, through his association with the Ministry of Treasury, Economics and Intergovernmental Affairs, and at the Municipal level, with the Region of Haldimand-Norfolk. The second person I would like to introduce is Noel Dant. Noel comes from Alberta where he has served as a Consultant to the Alberta Provincial Planning Board. He will be explaining the land subdivision situation in Alberta to us. The third keynote speaker, and I will refer to him as the "inside expert", if I may call him that, is Terry Crowe. Terry is the Director of the Annapolis County District Planning Commission, who has an extensive background in the field right here in our own Province. I would like to thank Terry at this time for the considerable personal effort he has put into providing us with an overview of the land subdivision process in Nova Scotia.

Finally, I would like to express my appreciation to those persons involved in the various technical sessions, and to all of the participants.

I am sure that most of you are aware that I have been Minister of Municipal Affairs for only a short time, and I am still rather unfamiliar with some of the finer aspects of Planning. My previous experience, however, in private law practice and particularly my association with local government

in Colchester County has introduced me to the complexities relating to the public interest in the subdivision of lands as expressed through bylaws and regulations.

As the subdivision of land is the initial stage in development, it is a key component in the planning process. When we speak of subdivision, we must realize that it is not always uniformly understood. The layman's interpretation is different from a strict legal interpretation (the division of land or the creation of a parcel of land). To add to the confusion, even the Statutes have defined subdivision differently in different cases (for example, subdivision regulations define it as the creation of four or more parcels, but in the case of subdivision bylaws, it is defined as division into two or more parcels).

As you know, while subdivision controls vary from place to place, in general, they tend to specify the minimum dimensions of lots, street and rights of way; easements for services; setbacks and open space requirements and the procedures for submission and approval of subdivision plans. As subdivision is associated with the conversion of the use of land through development, it is an activity that takes place largely on the urban fringe or in the countryside. As a result, subdivision bylaws and regulations are among the most common and most important planning tools in rural areas.

Fundamentally, our concern with directing the subdivision process reflects problems associated with improper development. Problems originating out of poor subdivision design include the cutting off of areas for future development, the increase in the costs of providing services and utilities, the increase in the dangers associated with traffic access and circulation, insufficient provisions for open space or public use lands, and health hazards due to inadequate lot sized for on-site servicing. The mere presence of controls is not necessarily a remedy, we always have to guard against seeing controls as being ends in themselves, in some cases our subdivision regulations are confusing, or old and inadequate for their purposes.

Subdivision regulations and bylaws are primarily local controls, sepcifying standards to be followed, and the level of services to be provided. Because subdivision is such a fundamental activity, a variety of actors are involved in the process, including developers, both small and large, private and public; lawyers; mortgage lenders; municipal councils, development officers; health inspectors; hydrogeologists, biologists and chemists; highway engineers, and planners at the Provincial and Municipal levels. Each plays a part in attempting to ensure development with safe streets, good drainage, and

sanitary conditions, while safeguaring the rights of private property owners in a cost effective manner.

Subdivision in Nova Scotia takes place under one of the three conditions - where there are no subdivison controls, where there are only subdivision regulations, or where there are both subdivision regulations and subdivision bylaws. At present, 27 municipalities have no subdivision controls, 22 have only subdivision regulations and 16 have both subdivision regulations and a subdivision bylaw. Recent years have witnesed an increasing complexity in the relationships between development pressure, government constraints on design and the cost of lots. This has tended to broaden rather than narrow the area of conflict between developers, regulators and consumers. Another characteristic trend has been the growing price gap between serviced and unserviced lots as development has been particularly sensitive to inflation. Governments and taxpayers alike have tended to demand greater efficiency in providing services and as well to seek alternatives to capital intensive settlement forms. As a feature of development activity in the Province, it must not be overlooked that the Housing Commission has had a substantial impact, both with respect to the creation of subdivisions and with respect to larger issues, such as the allocation of scarce resources.

For our own part, the Department of Municipal Affairs is deeply concerned with subdivision, arising out of our responsibilities under the Planning Act, and as well, with our role in assisting in the financing of local services. The Department's involvement covers a number of aspects including the incorporation of good planning principles, the prescription of subdivision regulations at the request of Council, the approval of bylaws, the conformity of Municipal Development Plans and Regional Development Plans, and the implications for municipal and provincial finances. In addition, the Department is further involved in assisting in formulating Provincial Land Use Policy through the Deputy Minister's Committee on Land Use - in particular, through the Land Development Standards Subcommittee. This committee is extremely important for governments that are structured vertically. Committees that operate horizontally are extremely important to us and this one, I think, has great potential.

A number of sessions will deal with issues relating to subdivision and standards. For instance, the technical session on "On-Site Sewage Disposal" will discuss alternative waste management systems and site modifications. The new Department of Health on-site sewage disposal regulations will be examined in terms of their impact on subdivision design. The session on Subdivision Design Techniques will look at what elements comprise good design, as well as the common problems and pitfalls encountered in our province. The technical session

on "Providing the Utilities" will outline the considerations that planners, developers and utility corporations must take into account in the provision of services to subdivisions. The whole range of services will be covered, although particular attention will be paid to telephone and power requirements. The session on "Phosphorous Loading in Lakes", which replaces the session on Cottage Subdivision in your programme, will consider the impact of development on lakes. I hope this will lead to an examination of the environmental limits to shoreline development.

The economics of subdivision will be revealed in two sessions on financing land subdivision. In the session on "Where the Money Comes From" a panel of potential money lenders will describe the market/investment side of subdivision, and will attempt to explain the mysteries of high risk vs low risk, and short term vs long term loans to us. For those of you hoping to do some developing as a sideline this will give you an idea of how to get the money. A panel of developers will explain the cost/production side of the subdivision process in the session on "Where the Money Goes". You will be taken step by step through the development process and exposed to the trials and tribulations of a developer. I know there is a tendancy to worry about developers; most of them are responsible and law-abiding citizens, and I am glad that they are participants in the seminar.

The program also includes several sessions respecting the administrative aspects of subdivision control. The technical session on the "Efficient Administration of the Subdivision Process" will endeavour to point out the powers and limitations of subdivision control. Ideas will be put forth on how to educate the public and convince councils to accept subdivision controls, the actual process of obtaining an approval for a subdivision plan, and some points about the enforcement of planning controls. The session on "Dealing with Hardships in Land Subdivision" will consider how to make the process more flexible so as not to "catch the innocent for no good reason". The inequities and equities of the present system will be discussed, as well as the need for more flexibility in the system.

Finally, a couple of case studies will be presented, and will attempt to focus on a number of issues, such as design, process, administration and equity. For example, the "Lepper Brook Cast Study" will relate how intensive subdivision activity took place in a municipal water supply area, and the possible detrimental effects on both water quality and quantity. The study will examine the types of land use conflicts that might occur and what options for the protections of the water supply are open to a water utility. The "Nictaux Case Study", which comes from the Middleton Areas of Annapolis County, will focus on the problems of subdivision design and the potential for groundwater contamination as a result of overdevelopment on

on-site services in a rural area.

In closing, I want to express the hope that this seminar will be able to respond to suggestions that have been made to improve subdivision procedures. As a new Government, I hope that we will have the momentum to review, rationalize, and streamline procedures. We will be proceeding with a review of the Provincial Planning Act. Such matters as the legal jurisdiction, the standardization of certain definitions and specifications, the need to encourage early consultation in the process, which is vitally important, the imposition of time limits on approvals are perhaps overdue for consideration. This seminar offers a unique opportunity to deal with the role subdivision plays in planning, in an informed and consultative manner.

Planning, like any government process, must be open, and fair and responsive, and what is equally important is that it must appear to be open, fair and responsive.

I leave that thought with you and welcome you again to the Seminar and hope you enjoy yourselves.

Thank you.

KEYNOTE SPEAKERS

NOVA SCOTIA SUBDIVISION PROCESS

Terry Crowe
Director of Planning
Annapolis County District
Planning Commission

PREAMBLE

This paper is written to express the main points presented in the talk entitled an "Overview of the Nova Scotia Land Subdivision Process."

The main thoughts presented here were initially outlined in a paper entitled "A Partial Discussion of Subdivision Controls in Nova Scotia" dated March 15, 1978. This paper was written because I was becoming confused about the effectiveness of current subdivision controls and because it was becoming increasingly difficult to answer many of the questions which presented themselves in our office during routine subdivision approval procedures. The paper was forwarded to a variety of departments and people involved in the subdivision process in Nova Scotia. I asked for comments with the idea of improving my understanding of the purpose and process of subdivision controls. Most of these responses were informative and encouraged me to ge on with my thoughts on subdivision controls.

This talk today is a summary of that initial paper, the feedback and my synthesis of the material to date. As I have not perfected a picture of how to improve subdivision controls in Nova Scotia, this discussion will not be as complete as I would like it to be. Consequently, I do not ask for a consensus on my views but rather invite instructive comments.

By "subdivision controls" I mean the subdivision features of the Planning Act: Subdivision By-laws and Subdivision Regulations, and supportive regulations (i.e., highways, on-site sewage regulations, etc.).

This talk is not a summary of an academic research paper. It does not discuss the economics or finances of subdivisions, or the physical design features of layout or the subdivision approval process.

This presentation concerns itself with the following:

1. The absence of a proper historical, contextual, and conceptual framework by which subdivision controls can be discussed and improved.

2. The inadequacies of trying to solve subdivision problems on a case-by-case basis or by introducing minor improvements each time we adopt a new subdivision by-law or regulation.

3. The inadequate logic for subdivision controls in the Planning Act.

4. The rationale for having subdivision controls at all.

The points raised here do not address subdivision matters in Halifax, Dartmouth, and Sydney as these areas operate under City Charters which have a different method of subdivision control than is available for Towns and Counties in the rest of Nova Scotia.

INTRODUCTION

We are making history today because, for the first time in 25 years, we are seriously starting to rethink subdivision controls. Also, to the extent that ideas arising out of this three-day conference on subdivisions are incorporated into the next version of the Planning Act which the Minister of Municipal Affairs is about to prepare, long-term implications for subdivision controls may result.

In 1954, subdivision control was instituted in Nova Scotia in the Town Planning Act. In 1970, a few alterations to these original controls were made by making minor changes in this (new) Planning Act. Now, in 1978, we again have the opportunity to make changes to subdivision controls. As the 1970 changes concerning subdivisions were minor, we are really reworking some relatively old legislation.

It is interesting to note that Nova Scotia has in recent years been altering other important documents relating to government affairs. Some examples include: Provincial-Municipal cost-sharing formulas, user-pay concepts, changes to the Education Act and changes to the Assessment Act. It is important to note that in the 1970's, Nova Scotia is re-defining the roles of its governments in fundamental ways; ways which were established about 20 years ago. In this light, introducing changes to the Planning Act is not unique. It is possible that important new consequences will arise from these changes. These consequences will surface both in the long term and short. They will be both positive and negative. Some changes will be predictable, others will not.

Our job is to ensure that changes to the Planning Act will be beneficial.

Poor Record to Date

If planners pride themselves on being able to identify problems in advance and then to accurately solve them, we have failed miserably with respect to subdivisions and subdivision controls. We cannot look for applause here. Of all the planning tools, (regional development plans, municipal development plans, zoning by-laws and subdivision controls), it is the latter which are the most poorly defined, conceptually weak, without clear objectives, isolated from a land use management context, administratively problematic, interpretively ambiguous, unco-ordinated and excessively discretionary.

Subdivision controls are one of the poorest examples of a Planner's ability with which the citizens of Nova Scotia have had to contend.

Some examples of these inadequacies are:

1. There is a farmer in Annapolis County who finds it too expensive to subdivide 40 acres of his woodlot because the parcel is the "4th" lot (meaningless to him) and we require him to obtain our subdivision approval.

2. There is a lawyer in Halifax who, in 1978, is unaware of the dual definition of the term "subdivision" as defined in the Planning Act (1970). (We have had the Planning Act for nine years.)

3. There are lot owners in a subdivision in the east end of Annapolis County who cannot get their road snowplowed because the road was not "taken over" by the Nova Scotia Department of Highways during the subdivision approval process.

4. There is a man in Dartmouth who "owes" Annapolis County one public road.

The farmer did not sell his land because the cost of the required survey was greater than the value of the land. He does not understand why subdivision approval is (a) necessary and (b) so expensive. The County Council is sorry about this.

The lawyer is confused and may have completed (or not completed) numerous transfers of land without the required subdivision approval. Consequently, numerous titles to property may be invalid.

The lot owner or the County Council itself may have to pay to get the road snowplowed as the road is not yet public.

The County Council may have to sue the man in Dartmouth to make the road a public road even though the County's Subdivision Regulations and the Planning Act were specifically prepared to allocate road take-over responsibilities to the subdivider.

These kinds of problems occur every day in Nova Scotia. As most people own land or hope to, the negative effect of these imperfect subdivision controls (over the past 8 years) has been extensive and serious.

I suggest that this is a very poor record because we have:

1. failed to meet our own criteria of "identify-and-solve"

2. caused the citizenry to spend extra money, caused it a loss of faith in the purpose of local government and its efficiency; and have created a loss in the citizen's expectations of our effectiveness as planners (and lawyers).

3. not delivered on our promise as planners to effectively manage land and the servicing of it.

To be fair, the present problems of subdivision control stem from two main sources:

1. our inheritance of old subdivision ideas, from the 1930's and

2. our inability and unwillingness to improve subdivision controls.

To the extent that we inherit a problem, we are not to blame, but to the extent that we perpetuate and further complicate the problems, we are responsible. We should have begun extensive work on subdivision controls long ago.

I am suggesting that we have certainly added to the problem of subdivision control in the past eight years.

The people and Councils are looking (complaining) to us to remedy this situation. Only the complexity of the subject dampens their ability to speak accurately on the matter.

If we pride ourselves in being able to identify and solve problems accurately, then I believe we must establish:

(a) new objectives for subdivision controls

(b) better ways of administering subdivision controls

(c) a clearer definition of "subdivision"

Morally and professionally, we are the ones who must propose changes because we are the ones who maintain the current problems; we are most aware of the ways to constructively introduce changes and there are few others who are readily available to do this.

We must not be sitting here a year from now discussing these same problems. I suggest that we view the next three days as the beginning of the Planning Act Review process.

My job today is to provide an overview of subdivision controls in Nova Scotia. Accordingly, I do not limit my remarks to any one municipal unit.

This "overview" concerns itself with:

- all of Nova Scotia (with the exceptions of Halifax, Dartmouth, and Sydney)
- various Provincially applied regulations relating to subdivisions
- the legal features of the Planning Act
- our experience of common problems
- looking beyond the scope of current procedures and the Planning Act

I assume that:
- no one person or agency has all the solutions
- solicitors are giving different interpretations of identical points pertaining to subdivision matters
- there is no way for anyone to keep abreast of evolving legal interpretations of the Planning Act

- some Provincial departments and public agencies do not fully recognize the Planning Act (example: The N.S. Department of Highways new (April, 1978) Subdivision Road Specifications do not recognize the dual definition of "subdivision")

In making my remarks, I have two criteria in mind:

1. What does "final approval" mean/guarantee for the consumer? This question extends to Councils, Provincial Departments, public utility agencies, adjacent municipalities, the adjacent property owner, the potential purchaser of an approved lot. What are these parties getting from subdivision controls and final approval? (This is a back to basics approach.)

2. What problems, new and old, can subdivision controls solve to give us better land use management?

History

In getting back to basics to improve subdivision controls, it is useful to look back and examine the way subdivision controls were created and the history of subdivision control thought.

Unfortunately, when looking back for clues, there is very little to draw on.

If one looks for the history of planning thought, there is much information. One will find information on the topics of the practical application, theory, evolution and agencies of planning - but little about the underlying rationale of subdivision control.

If one looks for the history of zoning, it can be traced back to the 1600's, and 1800's in Germany. American applications of zoning can be traced easily but not so with subdivision control.

While subdivision control has been a significant tool in the realm of development control, and while it has a history, this has not been well documented. Our lack of attention in this regard is partly the cause of our inability to reach a consensus on the purpose of subdivision controls today.

A very superficial examination of subdivision history suggests that people were very aware of the division of land and had a variety of purposes in mind for doing so.

Consider:

1. The Egyptians dividing the Nile River delta each year using triangulation.

2. The granting of land in Canada (King to favoured subjects).

3. Various meaning of the term "subdivision":

   (a) division - Ontario - dividing forests into lots by using major roads. Any lesser division was a "subdivision."

   (b) division - Prairies - was 640 acres (1 sq. mile). Any lesser division was a "subdivision."

4. Early documentation[1] - 1769 - Executive Council minutes of York, England - Applicant must apply for a License of Occupation to lay down his house on a line (?) - survey required - house 12 feet from edge of the street - frontage at least 46 feet. The tinkers and tailors can locate in the back streets on lots 1/10 acre, etc.

5. Early context for subdivision controls - 1790 - "without limits there can be no perfection" (in laying out and developing a town).

6. Early 1900's - Garden City, Radiant City and Broadacre City concepts generated a need to recognize the division of land, the arrangement of lots, streets, and their servicing, use and design as one package.

7. Ontario - 1912 - City and Suburbs Plans Act - stated that all subdivisions occurring within 5 miles of a city of over 50,000 people must be submitted to the Ontario Railway and Municipal Board.

8. These initial concepts often dealt with large areas of land. By 1920, Sunnyside Gardens in New York was built. This 60 acre project recognized subdividing land based on a logical framework stemming from an overall plan concept. The land was divided in many ways (i.e., green space, lots, roads). Density was regulated.

---

1. Milner, J.B. (ed), Community Planning (1971).

These few examples suggest that there has been

(a) recognition of the importance of dividing land

(b) various meanings of the term "subdivision"

(c) a need to control subdivisions to achieve some purpose

These needs and purposes have changed and will continue to change.

9. Ontario - 1947 - E.P. Taylor began buying 2000 ac. for what was to become Don Mills. This was the first Canadian attempt at implementing a neighbourhood concept, (dividing land for different integrated purposes and servicing it accordingly). Topographic features were recognized in the design. As the project was large, dividing and developing the site was phased. There was an allocation of the responsibilities for providing services.

Not only did Don Mills serve as a physical example of the new way to develop, it probably became the recognized procedure to develop land. Given this, those who had to draft the initial provincial and municipal legislation to protect the public interest with regard to subdivisions and their servicing had the Don Mills experience foremost in their minds. Accordingly, some of the key principles and logic behind those early subdivision controls were as follows:

- the basic unit being regulated was the division of land
- most subdivisions were residential
- roads were an essential ingredient
- open space and recreational areas were necessary
- density mechanisms were required
- the phasing of subdivision must be recognized and addressed
- services were a critical element (both standards and layout criteria)
- the allocation of servicing responsibilities was important
- subdivisions of this sort were primarily to occur in urban areas

All these features were key concerns which town councils and solicitors had to address in preparing early subdivision controls to protect the then recognized public interest.

If the above list is reasonably accurate, the main concerns subdivision controls addressed were "how to control" and "who will pay". What was glaringly absent in the early subdivision controls was the tie-in (logical and conceptual) of subdivision controls with a land use management context established by the planning

policies and zoning by-law. This is likely as subdivision control thinkers probably forgot (or assumed the obvious) - that E.P. Taylor had a master plan which provided the overall concept and logic. As this was probably taken as a "given", it was not taken into account or recognized by legislators and public planners.

Accordingly, subdivision controls were not related to plans and zoning and no overall rationale for these controls was ever set down.

In Nova Scotia, the early subdivision controls outlined the elements which could be addressed and who would address them. The Ontario subdivision control legislation was probably used with minor changes.

A dual definition of "subdivision" was given but no one knows specifically why this was done. This is outlined below, with the corresponding section of the Planning Act 1969.

Town Planning Act Chapter 308	Planning Act Chapter 16
Sec. 1(e) "subdivision" means any area of land which has been divided whether by plan or by metes and bounds, or by description or otherwise	Sec. 1(i) "subdivision" means any area of land which has been divided
(i) into two or more parcels where the area is within a municipality in which a board has been established or within a city or town, or	(i) into two or more parcels where a municipal subdivision by-law is in effect, or ,
(ii) into four or more parcels where the area is within a municipality in which a board (town planning board) has not been established.	(ii) into four or more parcels where only regulations under Subsection 1 of Section 49 apply.

Note: No reference to necessity of Minister prescribing subdivision regulations as per Part III.

Because we can only guess at the concerns of the initial Nova Scotian legislators who drafted the early subdivision controls, it is difficult to evaluate for effectiveness.

In essence, Nova Scotia has inherited a very ambiguous set of subdivision controls which, today, are not very meaningful. The question today is "What are we going to do?". In the last 8 years, we collectively have compounded the problem. Some examples are given below:

1. Many lawyers ignored subdivision controls and regulations in land transactions.

2. Development Officers were confused about subdivisions, particularly when processing applications which raised tricky points regarding interpretation. (e.g. Currently there are at least three different opinions of what a subdivision is and when it occurs. There is no consensus.)

3. The confusion following the case of Reid vs. Reid.

4. The passing of Bill 141 which has created further legal and interpretive problems.

5. The lack of concern over the years to improve subdivision controls.

Continuing on in this fashion is irresponsible.

Planners make many promises. They sell theory, promise to stop ribbon development, and to ensure compact communities. We are supposed to assist in creating a logical and efficient return on our servicing expenditures. In essence, planners promise good land use management.

However, these promises are not fulfilled. By the time the Plan is prepared, the Plan, zoning and subdivision controls drafted and the package reviewed, revised and adopted, these promises are forgotten and technicalities govern (filter out) the original intent. Note that technicalities stem from the Planning Act which means that if we are not achieving what we should, the fault may be partially in the logic of the Act. Consequently, we are not stopping ribbon development, ensuring compact development or the efficient provision of services.

Because planners go through the planning process from start to finish, they do not easily see the shortfalls. The citizens, however, watching it all, do.

The only way to evaluate the success rate of the initial promise is to ask:

1. what does the Development Permit do (guarantee)?
2. what does Final Approval for a subdivision do (ensure-avoid-permit)?

Currently, by the time final approval of a plan of subdivision is given, the actual assurances are not clear.

SUMMARY

I have come to the conclusion that the most constructive way to establish an effective form of subdivision control is to re-evaluate the whole concern conceptually.

Trying to create effective subdivision control, by minor "patch-work" amendments to the Planning Act, will not work.

Trying to create effective subdivision control by clinging to our current concepts and framework and by carrying out only minor amendments to the Planning Act will not work. We must do better.

CURRENT CONCEPTUAL PROBLEMS

Some of the reasons discussions on subdivisions are circular and unproductive are:

1. Subdivision thought, problems and legislation, having evolved in a piecemeal fashion, have never been properly conceptualized. This is evidenced by the fact that currently subdivision regulations and by-laws are isolated in the Planning Act from regional and municipal planning, and the zoning by-law. Also there is a dual definition for the term "subdivision". Administratively, the subdivision controls are problematic and numerous assumptions are required in the absence of clarity, a body of interpretive knowledge and precise concepts of what the objectives of subdivision controls are.

2. Note that Section 49 of the Planning Act jumps right in and talks about procedures and requirements. There is no consideration given to purpose and objectives. Note that this is not true for zoning.

   If subdivision controls are basically tools, where is the purpose stated? We can define the purpose of subdivision control in one of two places: either in another document - the municipal development plan - or we can make the subdivision controls self-directing (within Part IX of the Planning Act). I prefer the former (new Planning Act amendments permitting). Currently, the purpose of the subdivision controls is absent in both places.

3. If the purpose of something is not defined, one is required (by default) to assume what it is. Currently, we have many parties, each with different interests assuming (and arguing) what the purposes, intent and objectives of subdivision controls are. The applicant consequently gets caught in the middle.

4. Under this arrangement, we are simultaneously working from two opposite poles, one strictly legal (subdivision) the other very conceptual (planning).

   (a) With planning, we start by being conceptual about land use problems. To make our ideas effective, we put them into legal documents called regional and municipal development plans and zoning by-laws. This is correct as all meaning should flow from the plan and be carried out in the municipal development plan and zoning by-law. The point here is that not only do we know what we are trying to achieve, we know where to go if we get into a problem: - back to the policies. This has been the key asset of having the current Planning Act (i.e. requiring municipal development plans to explain and direct zoning decisions and problems). However, planning cannot mesh with subdivision control due to the current legislative arrangement.

   (b) Currently with subdivisions, we start with a strictly legal definition and to confuse matters, we have a dual legal definition. To this legal term, we "load on" ideas about providing services and utilities and standards for these features. This arrangement has generated a host of very serious misinterpretations and assumptions. Not only do we have conflicting ideas about what we are supposed to be doing with subdivision controls, we usually try to solve these problems by referring back to the legal difinitions or to the original legislation for understanding and direction - and it is simply not there.

If subdivision controls are supposed to be a tool, we rarely get to use it because we are continually taking it back into the dealer for repairs. We seldom get to take it out in the field to use it effectively.

Consequently, planners never feel satisfied with discussions about subdivisions because they see it is not as effective a tool as it could be for planning. Lawyers, however, can enjoy discussions about subdivisions and have a sense of confidence in the topic because they are on their home ground (legal matters).

Because of this, planners and lawyers argue a lot.

As each has a valid point of view and both are partially defensible, a true consensus is difficult. Each can walk away dissatisfied. In what language are these people to discuss "subdivision controls"? In what language are they to explain this to politicians and the public? What can end these circular arguments?

In amending the Planning Act, we can either take subdivisions back to the dealer for more interpretation or we can redesign the blueprint. I suggest the latter.

Shift of Emphasis and Focus

We can achieve effective subdivision control if we refocus our attention and shift our emphasis to what we already know about and do with subdivisions. Currently, we view subdivisions in the following manner:

STRONGEST FOCUS ↑

A. Legal Aspects

1. recognition of the dividing land (dual definition)
2. describing the transfer of land (require plans)
3. recording of the transfer (registry office)

B. Servicing/Utility Aspects

4. recognition of servicing needs of divided parcels (water, sewer)
5. recognition of utility needs of divided parcels (railway, etc.)
6. sepecifying responsibilities for provision of services and utilities (in By-law)

Other

7. recognition of mistakes so we allow appeals to "final approval" (same as for Zoning) (vague about grounds)
8. recognition of changing needs so allow amendments to "final approval" (vague about reasons)

↓ WEAKEST FOCUS

By viewing subdivisions in this manner, we have designed our subdivision controls accordingly.

Conceptually, this is wrong because we:

1. want to achieve more than just take inventory of land transfers. (If we want to do only this, we could place subdivision controls in the Registry of Deeds Act.)

2. cannot properly talk about what the servicing requirements for divided parcels in subdivisions are without recognizing what use (developments) the land will have. The most serious error we currently make is refusing to acknowledge that subdivisions are related to land use.

   Even though "subdivisions" are legally separated from "use," all plans of subdivisions are processed only when the intended use of the lots is known. How else do you decide servicing requirements? This essential need to know the intended use of the lots is clear as questions about use are always asked of an applicant. If the applicant refused to state this, the development officer would become uncertain as to how to proceed and become confused about how to evaluate the application. (He might also become irritated.) We are schizophrenic about this because on one hand, we claim that subdivisions don't deal with use (that's a zoning matter), and on the other hand, we cannot operate without knowledge of "use." This blind spot is the crux of the problem conceptually. The solution is to recognize the use implications of subdivisions. Once these and other premises are recognized, a meaningful set of subdivision controls can be established.

3. cannot easily find meaningful grounds by which a person can appeal a final approved plan of subdivision. With the focus currently used (above), it is difficult using only the subdivision regulations and by-law and the implied grounds for approval therein defined, to argue that a subdivision should not be approved. How does "an interested person or a municipality within three miles" argue that a plan of subdivision not be approved? It is difficult to find valid reasons within Part IX (Subdivisions) of the Planning Act.

   It is very difficult since the current subdivision controls are written to address mostly internal matters affecting the dividing of the area into parcels (e.g., lot width, road width, block length, etc.). These matters are almost always of little consequence to the municipality three miles away or an interested party living halfway across town.

What is of interest to a municipality within 3 miles and an interested person are concerns relating to:
- environmental protection;
- increased traffic congestion caused by the subdivision (not so much the internal traffic problems);
- the wisdom, practicality and expense of Council extending municipal services to one area of Town over another to service a subdivision;
- the effect of a subdivision on the groundwater if all development in the subdivision and surrounding area is on wells;
- the manner in which a proposed subdivision will jeopardize a necessary road scheme proposed in an M.D.P.
- the manner of providing storm drainage to (through) and from the area being subdivided.

By enabling these concerns to be addressed through our subdivision controls, our review procedures would be modified and most important, more meaningful, as we would be ensuring more when we issue FINAL APPROVAL (i.e. protecting the public interest). Accordingly, it is this arrangement which will establish valid grounds for an appeal of a plan of subdivision. So too, with an amendment.

Note that this logic is the same as with zoning now. Both internal and external impacts are taken into account. With this arrangement, subdivision controls can become the tool they should be.

Our acceptance of these inherited notions, statutes, by-laws, regulations and procedures concerning subdivisions lock us into a situation we all know could be better.

Note that these are not minor problems. They cause continual difficulties and limit whatever effectiveness we might achieve. When a group of people talk this long about the same kinds of problems, it definitely is time to reconsider what we want to achieve with subdivision controls.

A SOLUTION

1. Assume that we are in the business of land use management.

2. Assume that all meaning, all purpose, all concerns, all logic should be articulated in a municipal development plan.

3. Assume that effective land use management must deal with the natural environment, resources, structures, buildings, uses, developments, services, utilities and subdivisions (i.e. all man-made activities having impact on the natural environment).

All are basic units of development.

4. Assume that the municipal development plan policies will be interrelated, consistent and mutually supportive.

5. Recognize that the municipal development plan policies provide the context for and purposes of land use management.

6. Recognize that to be complete, a land use management program (M.D.P.) must contain the following features:

   (a) It must set goals and objectives for the Municipality and address each activity man carries out (includes the impact and requirements of subdivisions).
   (b) Each basic unit is managed by recognizing:

   - ownership and change of ownership
   - services and utility concerns (internal and external: off-site/on-site)
   - land use concerns (internal and external: off-site/on-site)
   - environmental concerns (internal-external)
   - financial responsibilities (public-private)
   - other

7. Recognize that various agencies have a mandate to protect certain aspects of the public's interest and consequently, have a role in approving a proposal and in appealing and amending it (includes subdivisions).

8. Recognize the need to treat "subdivisions" with the same logic the Planning Act gives to "uses".

In the Planning Act, we can address "use" to achieve defined land use management goals and objectives. We are allowed to classify "uses" into meaningful categories (e.g. residential, commercial, industrial, etc.) We are allowed to evolve principles (policies) for the management of these uses to achieve the defined goals (safety, compatibility, etc.) For each category of use, we are allowed to tailor both on-site standards in the zoning by-law and, together in the plan and zoning by-law, we can have off-site standards (i.e. through the feature of zoning amendments. Appeals are often based on "the protection of the best interests of the municipality".) Because we can tailor the standards, we issue Development Permits which mean different things (i.e. ensure we recognize that different impacts are caused by different use of land).

Note that with "use" we very seldon get into definitional arguments

as we do with "subdivision" and we always maintain the basic right of the owner to use his land in some manner (we can't "freeze" land). Why can't we apply these same basic features and logic to "subdivisions"? I think we can.

I suggest that we can always allow an individual to sell his land, avoid definitional arguments and apply planning policy direction and internal and external requirements and reviews to plans of subdivisions. Conceptually, we must recognize the difference between the right of a person to divide and sell his or her land in principle, and the potential impact that a plan of subdivision has on the public interest. Until we stop clinging to the definition of "subdivision" and stop equating this with an individual's right to divide and sell land, we cannot entertain a meaningful purpose for subdivision controls. We must learn that a subdivision is a basic unit of development which may affect the public interest. We must base our new subdivisions controls on this premise.

Parallel Principles for Zoning and Subdivision Control

Accordingly, just as an individual has the right to use land, he can also divide it; just as a person cannot do anything he wishes with his land, a person should not be able to subdivide any way he choses. The use of land and the "use of a subdivision" can be categorized. As each use and each plan of subdivision (not the basic right to divide) generate different impacts, both should have tailored standards, as necessary, to achieve the principles of the plan policies. Just as each Development Permit means something different, so should a final approval for a plan of subdivision.

Basic Logic for New Subdivision Controls

With this understanding, we could accept that subdivisions:

1. (a) are submitted for many different purposes and reasons -
   (b) involve different uses (vacant to apartments, etc.)
   (c) involve different servicing and utility requirements (none - many)

2. (a) have various impacts on the natural environment (minor - serious)
   (b) have various impacts on adjacent land use (minor - serious)
   (c) have various impacts on services and utilities (none - many)

3. That the impacts of subdivision can be both <u>within</u> and <u>adjacent</u> to the area being subdivided (permit internal review e.g. for layout; external e.g. for groundwater, traffic, etc.

4. Therefore, a full internal and external review of plans of subdivision is practical and logical to ensure effective natural environmental protection, efficient land use and a prudent expenditure of public money (e.g. services).

5. Such a review gives meaning to various interests in approving, modifying, refusing and amending plans of subdivision. Accordingly, grounds for appealing final approval of subdivision would be more logical and sound.

6. With this view, the definition of "subdivision" could apply to the division of one area of land into 2 or more parcels. Defining a "subdivision" as "4 or more lots" is illogical.

7. Decisions about exempting some subdivisions from certain reviews and approvals prior to final approval by the Development Officer would be allowed. These could be made by the Development Officer (locally) and the Community Planning Division, Department of Municipal Affairs (Provincially). Each plan of subdivision would be processed in a tailored review procedure. We do this for zoning now.

In effect, we do all of this now for "use" in the M.D.P. and zoning by-law.

Making It Work

Translating this logic into enabling legislation entails:

- amending the Planning Act to enable municipal development plans to specifically address "subdivisions" in a tailored manner, i.e. adding a clause to Section 13(3).
- writing municipal development plans with a chapter dealing with subdivisions. A separate chapter plus related policies would be necessary (e.g. water, sewer, road, environment policies).
- amending the Planning Act to allow zoning by-laws to relate use to subdivision more effectively.
- amending the Planning Act to improve subdivisions (Part IX). Perhaps it is desirable to eliminate separate subdivision by-laws and subdivision regulations and their respective powers and place all the necessary powers under one single subdivision control document (by-law or regulation).

This would establish one universal definition of the term "subdivision" and one universal method for managing subdivisions. Currently, we have two universal definitions in the Act and a limited control. For example, our definition accepts that a

subdivision can occur for any purpose but all subdivisions must be sent to the N.S. Department of Highways for its approval. As some subdivisions do not involve roads at all, why not enable those that don't to be processed without this requirement. The Development Officer should have this discretion.

Effect

What would all these changes mean?

If implemented, this would mean that we would be saying to an applicant

> "You have the right to subdivide your land as you wish provided that you do not jeopardize a defined (R.D.P. or M.D.P. or Provincial Law, etc.) public right or interest. We know what kind of a community we want. And just in case you might jeopardize a public right or interest, we are going to require that you and everybody else submit your plans (intentions) to us so that we can review your proposal and ensure that the public interest is maintained. This is necessary so we can cooperate. We recognize that you want to contribute to our community, region and Province. We will tailor our review so that it will not be too cumbersome, time consuming, or expensive. We will pay some of the costs, so will you.
>
> If, for some reason, we have to modify you proposal, it will be for valid, stated reasons which you can appeal. We will tell you beforehand what to expect as someone else may appeal our approval. You will know what the possible grounds will be. Due process and a hearing will follow. As the public interest is articulated, "wild" appeals will be eliminated. If all goes well, the public purse will be spent wisely. No environmental concerns will cost us money and cause problems later. The subdivision can be serviced and maintained efficiently. Your potential lot purchaser can be assured of certain basic assurances (e.g. locating services, utilities, use, etc.) Certain standards will be assured. The chances of problems occurring later will be reduced.
>
> It may be that your proposal will be approved as presented. Usually, some modifications will be made but these will be beneficial to you particularly with regard to servicing. We may attach conditions to our approval, some of which

may ride with the land, in order that lot purchasers will know how to properly develop. No matter what, you will always have the right to sell your land. The less effect your subdivision has on the public interest, the less inconvenient the subdivision approval process will be. The more impact your subdivision has on the public interest, the more thorough our process will be."

This arrangement is better than the following current situation:

"You have the right to subdivide your land although we really can't tell you when you ask us whether or not you need approval. Bear with us please. We may want you to submit your plans for approval. When you do this we will process it to ensure that certain services can be provided. Our review will not be complete because we have not defined all the public concerns yet and even if we did do this, there would be difficulties like being able to extend services to the site, and being able to obtain development and building permits. The meaning of approvals may be misconstrued. We can't tailor our review as well as we should. You must talk to Highways about any kind of subdivision. We cannot help this. Some who review your plan will know what they want, others will not. The grounds for modification and rejection are not as well defined as we would like. You may appeal our decision but the process is not clear, nor are the grounds. Similarly, any person even living across town can appeal on presently unarticulated grounds. In other words, we may turn down or approve your subdivision on 1 set of criteria and someone else may give you a hard time based on another set. Sorry. But if you think this is bad, the reasons for considering and appealing an amendment decision are no better. If all goes well, fine, but agencies may try to influence your design obliquely without proper legal grounds (e.g. Environment). And if your subdivision is on wells, and your development lowers the water table, we cannot protect other existing home owners.

Neither can we manage the groundwater resource. This may not affect you adversely. However, it may affect your prospect for lot sales. Similarly, we cannot regulate your subdivision with regard for the expanding gravel pit next door. Our review process suffers, as you may, from legal pitfalls all along because we will continually require legal clarification. We lack a proper context for subdivisions."

How Would It Work

By placing a land use management context on subdivisions, subdivision control is given meaning via the planning policies (regional and municipal) and with respect to provincial departmental mandates and public agencies, M.T.&T., N.S.P.C., D.A.R., etc.

With a land use context for subdivisions, we would be operating on the logic "You can subdivide as you wish but the more impact your subdivision generates upon the public interest where defined, the greater the review."

If the land use management control for subdivision controls is recognized, how would it work?

We can begin by considering that the subdivision review process ends with FINAL APPROVAL.

This final approval obviously is supposed to mean something. The idea of reviewing plans is to ensure that what the applicant intends to do is "OK". The question is "OK for what and according to whom?"

I assume that with subdivision controls, we are in effect saying to an applicant "You can do what you want except that you cannot jeopardize a defined public interest." In the subdivision review process, we will ensure this so that FINAL APPROVAL will (at least) mean it appears that you are not jeopardizing an articulated (as per statute, regulation, policy, etc.) public interest. Ideally, we will be providing assurances.

Establishing a comprehensive system via the Planning Act to enable us to have the most beneficial subdivision controls would involve recognizing that all of the following parties may have an interest in ensuring that their respective mandates (parts of the public interest) are not jeopardized:

Parties With an Interest in Subdivision Control

1. Federal Ministries
2. Crown Corporations/Agencies
3. Provincial Departments
4. Provincial Boards/Commissions
5. Public Service/Utility Companies
6. Municipal Council
7. Adjacent Property Owner
8. Potential lot purchaser (developer)
9. Applicant
10. Public in general

Basic Assurances

Each of these parties have a role in achieving the public interest. For subdivisions, the kinds of public interest which may be affected and the kinds of assurances FINAL APPROVAL could guarantee are summarized below:

1. Land Use Management (includes environmental protection and resource development).

2. Service/Utility (includes responsibilities for Provincial financing and maintenance).

3. Transfer of Land (includes accurate description, visual presentation, and recording; implies valid title).

To go about achieving these assurances for the above listed parties, the following questions are pertinent (see Table 1 for short summary of current assurances):

Necessary Questions

1. What should "FINAL APPROVAL" mean for the Federal and Provincial departments, public agencies, municipal council, the applicant, the potential lot purchaser, the solicitor, the adjacent property owner?

2. What should final approval guarantee? In other words, how well do we intend to protect the public interest?

3. Under what circumstances can final approval be refused by the Development Officer? i.e. what public interests supercede the applicants proposal. Note that we are not discussing his right to sell his land.

4. Under what circumstances can FINAL APPROVAL be appealed? (errors in judgement about the public interest? adverse affects?)

5. What appeal procedure will adequately represent all parties' public interest? (same as the approval procedure?)

6. What amendment procedure will adequately represent all the parties' public interests? (flexible?)

7. How can the subdivision review process be designed so as to adequately represent the public interests of each part concerned? (Note: not the one we have now).

TABLE I

POSSIBLE BENEFITS AND EXPECTATIONS OF
SUBDIVISION CONTROL NOT PRESENTLY ACHIEVED

ASSURANCES	INTERESTED PARTY			
	FOR SUBDIVIDER PROPOSING SUBDIVISION	FOR COUNCIL ADOPTING SUBDIVISION BY-LAW OR REGULATION	FOR PROVINCE DEPTS. AND PUBLIC UTILITIES	FOR PURCHASER OF AN APPROVED LOT
1. TRANSFER OF LAND ASSURANCES	- *to divide and sell honestly and accurately what applicant wants*	- *to be aware of land transfer*	- *registry of title (Provincial Activity)*	- *to by land accurately and with no "deed" conflicts*
2. TRANSFER OF LAND + SERVICING + UTILITY ASSURANCES	- *to sell serviced lots*	- *to plan and control services (assumptions of land use)* - *to allocate costs*	- *registry* - *assessment* - *highway (access)* - *on-site sewage disposal* - *power/telephone* - *railway crossings* - TO ALLOCATE COSTS AND TO AVOID CONFLICTS	- *to accurately buy land and to be ensured of services & utilities* - TO MINIMIZE MORTGAGE AND ACQUISITION PROBLEMS
3. TRANSFER OF LAND + SERVICING + UTILITY + LAND USE ASSURANCES	- TO SELL SERVICED LOTS WHICH CAN BE DEVELOPED AND WHICH WILL NOT CAUSE OR BE SUSCEPTIBLE TO ADVERSE EFFECTS	- TO ASSIST IN RELATING SERVICES TO DEVELOPMENT & TO PUBLIC POLICIES - TO ENSURE NATURAL ENVIRONMENTAL PROTECTION	- TO AVOID CONFLICTS WITH PROVINCIAL, REGIONAL AND DEPARTMENTAL POLICIES, PROJECTS AND PROGRAMS	- TO BUY QUALITY SERVICED LOTS WITH WHICH ONLY MINOR PROBLEMS WILL BE EXPERIENCED IN THE SHORT AND LONG TERM

QUESTION: 1. Is it desirable and necessary to provide all of these assurances to each party?

2. If yes, how can this be achieved?

3. If no, which assurances are to be provided?

Italics = Accepted and assumed assurances of "FINAL APPROVAL" which are indicative of current legal interpretations and planning intent.

Specifics

It is essential to recognize that subdivisions are proposed for a variety of purposes and that a variety of impacts may result. By regarding subdivisions only as a legal way to transfer land, we ignore the physical realities and forego an opportunity to plan and to protect the public interest.

Below is a detailed list of the parties which may have a direct or indirect interest in ensuring the public interest via "subdivision control" (final approval).

PARTY	POSSIBLE PUBLIC INTERESTS AFFECTED BY A PROPOSED SUBDIVISION
A. FEDERAL	
Environment Canada	- environmental control
Canadian Railway Transportation Commission	- public railway crossing, signs and maintenance - (Planning Act permits control, seldom required)
Transport Canada	- residential subdivisions located within high noise contour zones could be avoided (not done)
B. PROVINCIAL	

Where A Regional Development Plan Exists

A regional development plan basically states the public interest of various provincial departments in a region. In drafting provincial policy for a regional development plan, thought needs to be given to the way in which subdivisions may enhance or jeopardize provincial interst and commitment. The Community Planning Division could have a

significant role in co-ordinating the review of subdivisions for the Province to avoid policy conflicts. The Planning Act requires amendment to enable this to occur.

Where No Regional Development Plan Exists

If subdivision control is desired by any of the Provincial departments, policy articulation, standards and procedures need to be defined. Perhaps the Community Planning Division, Department of Municipal Affairs, could co-ordinate subdivision review and assist in determining when and why Provincial Departments could or should approve, require modifications to, or appeal a proposed plan of subdivision or an amendment to a plan of subdivision. In amending the Planning Act it is essential to permit Departments to have the opportunity to make (legal) comments upon plans of subdivisions. But as every application need not go to each party, Community Planning Division could co-ordinate this.

DEPARTMENT	POSSIBLE PUBLIC INTEREST AFFECTED BY A PROPOSED SUBDIVISION
Highways	- public road approval, maintenance (standards exist now) - private roads (assumes little or responsibility at present)
Public Health	- on-site sewage disposal acceptability (regulations exist now)
Environment	- water supplies - protected (currently not a part of subdivision approval process)
Mines	- protection of mineral resources, e.g. gravel pits (currently not a part of subdivision approval process)
Agriculture	- agricultural land preservation - drainage program conflicts - farm loan board - ownership assurances (currently not a part of subdivision approval)
Development	- public projects and funding compatibility (currently not a part of subdivision approval)

DEPARTMENT	POSSIBLE PUBLIC INTEREST AFFECTED BY A PROPOSED SUBDIVISION
Lands and Forests	- conformity with recreational policies - private road cost-sharing (currently not a part of subdivision approval)
Recreation	- conformity with recreational policy, projects or funding (currently not a part of subdivision approval)
Tourism	- conformity with tourist policies and projects (currently not a part of subdivision approval)
Registry of Deeds	- avoid conflicts and confusion of title and with other plans of subdivision, survey plans, covenants and public rights of way (currently - passively involved - records final approved plans of subdivision but does no checking. Will also record invalid deeds; has an ambiguous role)
N.S. Housing Commission	- conformity with N.I.P. programs, land banking, senior citizens projects and other programs (currently not a part of subdivision approval)
Department of Municipal Affairs (a) Community Planning Division	- conformity with Provincial Planning policy, particularly where a Regional Development Plan has been adopted (currently receives notification of final approval. May appeal, although the grounds are vague)
(b) Grants and Finance	- acceptability with or for Provincial cost-sharing, grants, joint certificate of approval, borrowing, etc. on Municipal services (water sewer, storm drainage, roads, etc.) - could review plans of subdivisions with respect to Provincially approved Municipal Development Plans for financial management (currently not a part of subdivision approval process)

C. PUBLIC UTILITIES

AGENCY	POSSIBLE PUBLIC INTEREST AFFECTING A PLAN OF SUBDIVISION
N.S. Power Corporation Mar. Tel. & Tel.	- telephone and power planning, ability to provide service, and surface or underground facilities (not done now) - public right of way compatibility (not done now) - assist in co-ordinating the provision of poles and allocation of costs (not done with subdivision approval process) - Planning Act permits this but many existing subdivision by-laws and regulations do not stipulate requirements or procedures
Board of Commissioners of Public Utilities	- salvage yards, service stations - considering costs and services (e.g. water rate increases) (currently not a part of subdivision approval process)

Comments

Currently, the above public agencies are very clear about what they require. They have standards.

The present ineffectiveness of these agencies representing their interests with respect to subdivision control stems from the following concerns:

(1) The main drawback is that these agencies have little or no awareness of, or recognition in, the adopted subdivision by-laws or prescribed subdivision regulations. Consequently, subdivision approval procedures by which subdivisions can be forwarded to them for comment are not used.

(2) The legal force of their comments on plans of subdivision is weak or non-existent; if a plan of subdivision is sent to a Public Utility, e.g. M.T.& T., for comment, it is often difficult to require that suggested improvements be incorporated into a plan of subdivision prior to final approval.

D. MUNICIPAL LEVEL

PARTY	POSSIBLE PUBLIC INTEREST AFFECTED BY A PLAN OF SUBDIVISION
Municipal Units (Towns, Counties, Villages) - Council - Planning Advisory Committee - Municipal Engineer - Municipal Solicitor - District Planning Commission	- to achieve logical planning, engineering and financial delivery of any municipal service - would include the layout, standards, cost of provision and maintenance, any of the following: (Currently used fairly effectively where a subdivision by-law and regulations are effect) (1) Service Concerns - water shed and water system - sanitary sewer system - storm sewer system - on-site sewage disposal (Provincial) - roads - public and private (Provincial and Local), railway crossings and bridges - sidewalks/streetlights - rights of way for any of above (currently done; could be impoved for private roads and railway crossings) (2) Land Use Concerns CHECK FOR: - conflicts with public interests, projects or property - e.g. water shed area, water system - conflicts with Municipal Development Plan policies, urban uses, hazard land resource management, financial, etc. - conflicts and integration with zoning by-law (e.g. avoid problems such as having a residential subdivision approved in a designated agricultural area or zone (requires clarity now)

E. (1) SUBDIVIDER'S BENEFITS

With defined purposes for subdivision control, the subdivider could receive constructive comments to achieve a subdivison in which the lots would be compatible, serviced and for which natural environmental protection would be ensured (not achieved totally now).

(2) SUBDIVIDER'S ROLE

- to fully disucss his proposal with the development officer
- to co-operate with all parties (could be a headache for him if the subdivision review process and requirements are not clear and practical, as is the case now)

F. LOT PURCHASER - BENEFITS

- would be purchasing a lot which meets all requirements and which involves, or would involve, few, if any, problems (not done now)
- would be required to respect any development, servicing or other requirements (may be done now)

G. PUBLIC BENEFIT

- with public interests defined and built into the subdivision controls, the maximum public benefit would be, hopefully, achieved (not done now)

All of the above interests may be affected by a subdivision proposal and consequently, the Planning Act must be amended to allow these interests to be protected. Also, the subdivider must be required to modify his plans accordingly. This must be clearly and precisely defined. Presently this cannot be achieved. It is unacceptable to continue in this manner.

Currently, the Planning Act is set up to handle subdivisions in the following manner:

Lets recognize the division of land.
+
Lets recognize the fact that the parcels require services and utilities
+
Lets not admit that land use plays an important part in determining services, utilities and lot size.

+
Lets not admit that a subdivision can affect the public interest in many ways.

Under this arrangement, the FINAL APPROVAL for a plan of subdivision provides various assurances.

Type of Assurance	Detail	Effectiveness of Existing Control
1. Transfer of land	lot location, description, parcel arrangement, etc.	- acceptable - vague regarding ownership and validity/i.e. no check means no assurance
2. Provision of Services/Utilities Assurances	water, sewer storm, septic tank, public/ private road, railway power, telephone	- partly effective regarding standards, financial responsibilities - weak regarding "use" implications - absence of planning context to plan services/system and utilities
3. Land Use/Environmental	while each subdivision generates different land use impacts and requirements for services, the current situation does not enable either a tailored or adequate review (or control). Consequently, whatever the planning policies attempt, subdivision controls will not be fully supportive	- no recognition of this - no tie-in with M.D.P., poor tie-in with zoning - limited environmental management - no proper review of impact of subdivision to ensure achievement of: (1) land use policy (2) planning of services

Current subdivision controls are strongest when ensuring the provision of services. However, even this is not sufficient.

A good Municipal Development Plan will address the following topics regarding any one service (e.g. water):

1. Existing problems with supply, transmission, distribution

2. Insist on a comprehensive-systematic approach to (1) improving existing services and (2) providing and extending new services.

3. Present concepts for future delivery of services throughout the Municipality. This relates to phasing of the system and this in turn relates to the overall land use/development and management objectives of the Municipality.

4. Establish physical limits and parameters for the extension of services (e.g. to generally extend services in an east-west or north-south direction; e.g. always provide services where most economical).

5. Define financing responsibilities. (Province/Town/Subdivision/ Property Owner) for provision and maintenance of services.

Note that it is within this kind of a servicing context which a Council, interested in planning, will find itself assessing the servicing requirements of a proposed subdivision.

However, dealing strictly within the scope of current subdivision controls, most of the concerns regarding a planned service policy (as above) of Council cannot be either related to the subdivision by-laws, regulations and service, or subjected to the best review to ensure that the public interest is achieved. It is this inability which results ineffective subdivision control.

For example, if a Municipal Development Plan defines a new valid road layout scheme, our controls cannot fully ensure that a plan of subdivision will not jeopardize this. I am not convinced that with the present Planning Act, the public interest (road scheme) will be protected by our subdivision controls. We need this kind of protection (i.e. Council, applicant, Province, etc.) The "FINAL APPROVAL" needs to ensure this. The Planning Act needs to ensure (a) that the road scheme is protected and, (b) that the applicant's subdivision must be either modified or (logically) if necessary refused (as proposed). This applies to all services and utilities.

CONCLUSION

With the Planning Act amended along the lines suggested, we would achieve the following:

1. eliminate many of the current problems and much confusion
2. know why subdivision controls are necessary
3. give subdivision controls (a tool) a purpose
4. be more responsive to land use management problems

With this new arrangement if we get into an administrative, land use, servicing, resource management, environmental or financing problem during the processing of a subdivision, we have something to fall back on (i.e. the articulated public interest - R.D.P., M.D.P., etc.). If the Planning Act is appropriately amended these problems can be solved as smoothly as those of "use" via zoning. While improvements can be made even to zoning it works fairly well because the basic framework is there.

The most important benefit of the present Planning Act over the previous Town Planning Act is that we said: "From now on you cannot have a zoning by-law by itself." We also said: "Those municipal units which only have zoning must get busy and prepare a municipal development plan." (i.e. tools cannot stand by themselves).

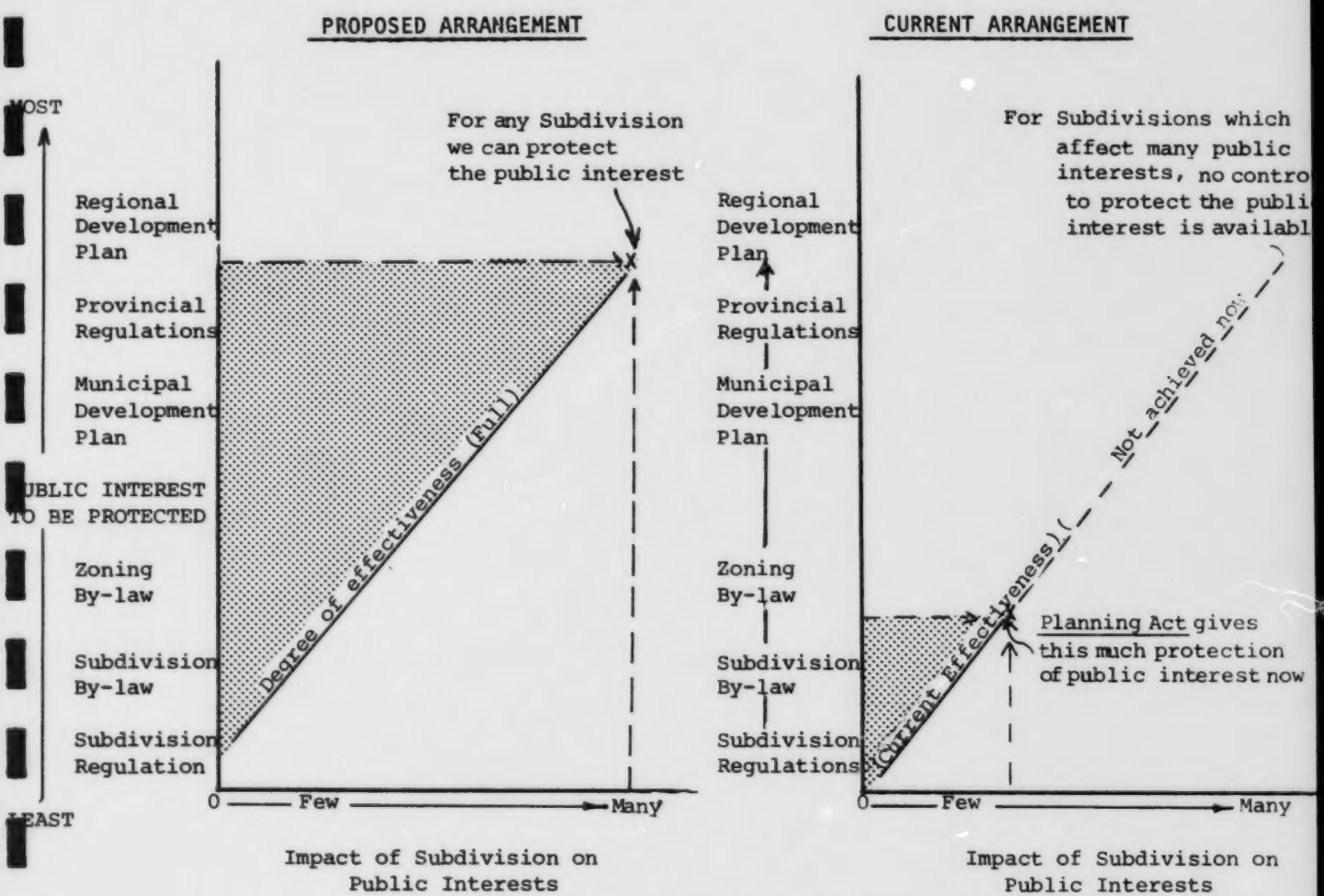
In effect, we recognized that zoning is only a tool - by itself it does not achieve the public interest (we had been winging it).

In 1979, it is precisely in this same predicament that we find ourselves with subdivision controls. They are tools. They, by themselves, do not serve the public interest as they should. They are neither self-directing nor self-correcting.

It is suggested that provision for stating the purpose of and the logic for subdivision control be placed in the Planning Act so municipal development plans can provide the proper land use management context for subdivisions.

This task will require hard work. If the concepts of municipal development plans and zoning as we know them did not exist and they had to be invented, we would find ourselves involved in mental gymnastics centering on the word "use". We need to carry out a similar kind of thinking based on the word "subdivision". This will involve some new concepts. This may be hard not only because it is new but mainly because we have dealt so long with a faulty concept.

COMPARISION OF THE EFFECTIVENESS OF THE PROPOSED
AND EXISTING SUBDIVISION CONTROLS (as discussed herein)



As we can anticipate (at any time) that a subdivision may jeopardize the public interest, we need to establish a rationale and logic in the Planning Act, to fully ensure that the public interest is protected.

SUBDIVISION CONTROL IN ONTARIO

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I expect that if I could read your minds, I would find that a lot of you were thinking: "Here is another damned Upper Canadian 'expert' come to tell us downeasters how to do things right!" So I'd better start by confessing that in fact I am not an expert on subdivision control in Ontario at all. In fact, my main qualification to be talking to you today is that while in one way or another I have been involved in planning in Ontario for the past 15 years, I have not had much to do with the details of subdivision control, and perhaps I am in a better position to look at it fairly objectively than I would be if I came to you from the Subdivisions Branch of the provincial Ministry of Housing. On the other hand, I had better admit to you right now that if later on you ask me questions about the intimate details of the process, I am probably going to have to blush and tell you that my education never got that far. To answer questions of that nature really is a job for an expert, because the legislation and procedure are extremely complex. I would like you to keep in mind, as you listen, that the account of it which you will hear this evening is very much generalized and simplified, though I hope it it not grossly inaccurate.

I suppose that the proper place to start is with the question: Why should we try to control the subdivision of land at all? I think that part of the answer is fairly obvious. In subdividing land into building lots, we are, after all, creating a living environment which may affect the quality of life of many people for generations. To me, there is a clear public responsibility to ensure that that environment should be an attractive one, that the lots are a reasonable size and shape, that traffic can move efficiently without endangering children playing on the street, that water supply and sewerage systems can be efficiently and economically designed, and that there is space for schools and parks and the other amenities that make the difference between a monotonous mass of houses and a pleasant, liveable, residential neighbourhood. Without challenging the right of the landowner and the developer to make a reasonable profit, I firmly believe that it is the duty of the responsible public authority to the future residents to ensure that their surroundings will be safe, convenient, and attractive, and that the public services which they will need can be supplied efficiently and at reasonable cost.

But this is only part of the reason for controlling the subdivision of land. Converting a farm into several hundred residential lots, or allowing a string of a dozen or so houses to spring up along a

country road, does not just help to shape the lives of the people who will be living on those lots and in those houses in the future, it also helps to shape the entire growth pattern of the neighbouring city or town and of the region around it, and it therefore raises questions which concern the wider community. For example, is it using up good farm land when there is other land available for residential use that is not of the same agricultural quality? Does it mean that a highway is going to have to be widened or a new road built at public expense to enable the residents to get to their jobs in the city? Where is the water going to come from, and how is the sewage going to be disposed of? Is a sudden avalanche of children going to descend upon a small school that was only intended to serve a rural area? I hope that to this audience it is not necessary for me to spend more time defending the case that the subdivision of land does not concern only the landowner and his surveyor, but that it is vitally important to the community as a whole, and that therefore the elected representatives of that community have the responsibility to determine, within limits, how, when and where it is done. Whether these representatives should be municipal or provincial is another question, which I shall come back to later on.

In Ontario, the principle of the public right to control land subdivision was accepted and firmly embodied in legislation over 30 years ago. After the Second World War, the surge of development created by the influx of returning servicemen, by postponed marriages, and by the removal of wartime restrictions, coupled with idealistic dreams of creating a brave new world, led to the establishment of a new Department of Planning and Development and the passage of a new Planning Act. This Act has been so much amended in the last 30 years that its original framers would probably have difficulty recognizing it now, but it still contains its original three main elements: the Official Plan, the Restricted Area By-law, more commonly known as the Zoning By-law, and subdivision control.

The subdivision control provisions of the Act were probably unique in Canada when it was first enacted, and they remain more the exception than the rule to this day, in that they give the primary responsibility for subdivision control, not to the municipality, but the provincial government. Why this happened I cannot say with certainty, but I would guess that it arose from a combination of two factors. One was an awareness of the enormous growth pressures which were building up and which threatened to spread urban expansion throughout the landscape of southern Ontario. The government was certainly well aware of the problems which already existed as a result of the random subdivision of land in

the prewar years and which largely brought about the creation of the Municipality of Metropolitan Toronto in 1953. The other factor was probably a realistic recognition of the fact that at this time there was next to no planning experience or expertise at the municipal level in the province. Be that as it may, the fact remains that in Ontario, until recently, a plan of subdivision had to be approved by a provincial Minister, and it is still not approved by the local municipality in which the land is situated. Initially, the responsible Minister was the Minister of Planning and Development. When this department was dissolved, the responsibility was transferred to the Minister of Municipal Affairs, and when this department was absorbed into the new Ministry of Treasury, Economics and Intergovernmental Affairs, the Treasurer of Ontario, rather oddly, became the responsible Minister. This soon changed again with the creation of a new Ministry of Housing. Since 1973 this ministry has been responsible for the administration of the Planning Act, and therefore, for the approval of plans of subdivision. Recently, an amendment to the Planning Act has allowed the Minister to delegate approval authority in certain cases. I will come back to this later, but meanwhile, as the basic system is not much affected, for the sake of simplicity I will describe it as if the Minister continued to be solely responsible.

To demonstrate that subdivision control in Ontario is big business, it is only necessary to point out that since the end of the Second World War the population of the province has doubled, from 4¼ million to about 8½ million today. During the past year, the Ministry of Housing gave draft approval (a term which I shall explain in a moment) to nearly 600 plans of subdivision, potentially accounting for over 40,000 dwellings. (This does not include condominiums, which is another complicated story).

This suggests something like an assembly line, and that is certainly not an altogether inaccurate description. A flow chart of the subdivision approval process looks rather like a wiring diagram for an Atlas missile. I am not going to attempt to describe it in detail, but to give you some idea of what it entails, I will read you some excerpts from the guidelines which the Ministry generously provides to anyone who is contemplating plunging into these dangerous waters. For those of you who may be interested in reading them, the guidelines are officially called "Subdivision Approval Procedures" and are available from the Operations Control Branch of the Ministry of Housing, Queen's Park, Toronto.

The guidelines outline five steps that must be taken before a plan of subdivision can be registered with the Land Titles Office.

These are: first, pre-application; second, preparation of draft plan; third, evaluation of draft plan; fourth, draft approval; and fifth, final approval. We are mainly concerned tonight with the first four stages.

At the pre-application stage, the guidelines suggest that the owner should look at a number of factors before even deciding to proceed with the subdivision application. These factors include: general physical and economic conditions; conformity with any official plan that is in effect or is being prepared or revised; conformity with any relevant by-laws, especially the zoning by-law; availability of suitable provisions for supplying water and disposing of sewage; adequacy of public services generally; and finally the rather vague provision "that the proposed road pattern and land uses are satisfactory."

At the second stage of the application, the going really starts to get tough. The application to the Minister must include a detailed application form; "at least 25 copies of the proposed plan of subdivision containing key plans (drawn to the required scale) showing the location of the subdivision"; and certification by an Ontario land surveyor.

The key plan is required to show full details of the area within about half a mile of the land to be subdivided, while the listing of the information to be shown on the draft plan of subdivision itself takes up 8 foolscap-size pages of the guidelines. Finally, the guidelines suggest, and I quote again "supporting municipal or consultants' reports, if any are available, assist in the evaluation and may be submitted with the draft plan. Air photos, photo mosaics and copies of the plan reduced to normal page size are welcomed."

You may have been surprised by the requirement that at least 25 copies of the draft plan must be submitted. This becomes understandable when we get to the third step, the evaluation of the plan. It is at this stage that the wiring diagram which I mentioned earlier is activated. While the Subdivisions Branch of the Ministry acts as a coordinating agency and is responsible for the final recommendation to the Minister, which normally, of course, is the effective decision, the proposed plan is reviewed and commented on by many agencies, both within and outside the provincial government. Of these, some of the most important are, for example, the Ministry of Transportation & Communications, which is concerned with the adequacy of transportation access;

the Ministry of the Environment, which is concerned with the provision of water supply and sewerage; the appropriate municipal council; and the local school board. In certain cases, the comments of other agencies, such as the conservation authority, may be extremely important in determining whether or not a plan of subdivision is approved. Also, to quote again from the guidelines, "This is the stage at which formal discussions should take place between the subdivider and local authorities about such matters as site taxes, rate and density of development, availability of public services, school sites, public open space, etc." In this connection, it is worth noting that under the Ontario Planning Act, the owner may be required to turn over 5% of the land to be subdivided to the municipality for park or similar purposes, or to pay a cash equivalent. It is also important to appreciate that while it is the provincial government that is responsible for subdivision control, the Minister will not normally approve a plan of subdivision that is in conflict with a municipality's official plan or zoning by-law.

The fourth stage in the process is draft approval, to which certain conditions are normally attached. Among the purposes of such conditions are the following, to quote the guidelines once more:

- "To ensure that changes to subdivision layouts considered essential by the Ministry are made.

- To ensure that federal, provincial and local interests are generally satisfied and that there is compliance with policies and procedures."

The guidelines go on to say: "The Ministry will require that certain procedures and minimum standards be met in the interests of sound development practice. It will require changes to any plan of subdivision where the design concept is considered not to be sound; the proposed plan will make development of adjacent lands awkward or impossible; the plan encroaches on a flood plain or top of an embankment subject to possible erosion; the streets in the plan and on adjacent properties are not aligned or create poor or dangerous intersections; road and highway widenings are required; lot sizes and road allowances are not of acceptable standards for the type of development proposed; schools are required; parks or other sites are required; or for other similar reasons." On top of all this, the subdivider must sign an agreement with the municipality to meet any further

requirements which the municipality may impose before the plan receives final approval. Only at this stage can a plan of subdivision be legally registered in the Land Titles Office.

You will probably have noticed that the term "draft approval" is misleading, since such so-called approval normally has a variety of conditions attached and really becomes effective only after those conditions are met, before which it can be withdrawn at any time. The Committee appointed by the provincial government to review the Planning Act recommended in 1977 that "draft approval" be replaced by an "approval in principle" which would be sufficiently firm to enable the applicant to proceed with detailed surveys and engineering design.

You may wonder if in all this, the landowner and developer are left entirely at the mercy of the Minister and his bureaucratic minions. The answer is that they are not. Any interested party may have an application referred to the Ontario Municipal Board at any stage, and in such cases, the Board, not the Minister, becomes the approving authority. This provides what amounts to an appeal procedure. However, the Board's decision can in turn be appealed to the Lieutenant Governor in Council, in other words to Cabinet, for final resolution.

This is a brief summary of the way in which the Ontario subdivision control system works. It is fair to ask what this elaborate machinery has accomplished. The best way to get an answer is simply to drive around and look at the sort of residential development which has taken place in Ontario in the last quarter-century or so. There is no question that, in general, Ontario is remarkably free of the sort of scattered, sporadic fringe development which extends into the countryside, sometimes for many miles, around most North American towns and cities. I am sure that all of you have travelled in different parts of the continent and are quite familiar with the sort of thing I am talking about. Apart from being frequently unattractive, it usually lacks adequate services; jobs, shops, schools, and parks are often remote; many unnecessary acres of farmlands or orchards have been sacrificed to it; and in general it is apt to be an aesthetic, environmental and fiscal liability to the community. I firmly maintain that Ontario's freedom from this sort of thing is no mean accomplishment. If you will excuse me for beating the drum for my adopted province for once, I confess that every time I drive into Toronto along a main road I am impressed by the sharp transition from farmland to

city which is so marked a contrast with the usual North American experience. Furthermore, when we do get into the suburban fringe of an Ontario town and actually explore a developed subdivision, we find a carefully planned street system, with paved streets, street lights, fire hydrants, and often underground wiring. If it is large, it will include at least one local park. Not long ago I visited a small mining town in northern Ontario, 2,000 people living a couple of hundred miles north of the Trans-Canada Highway, in fact the northernmost community in Ontario that can be reached by road. Recently, the mining company developed a new subdivision on the edge of town, and that subdivision is planned and serviced and built to the same standards that you would find in the suburbs of Toronto or Ottawa or London. I do not claim that these standards are unique in North America, but I think that it is fair to say that there are not too many parts of the continent where they are the general norm.

Having praised the accomplishments of the system, I will now turn to the other side of the picture. Ontario has managed to achieve a very high standard of residential development, largely through its subdivision controls, but it has been achieved at a price. It is obvious from what I have told you that the subdivision control process is very time-consuming, and in the past it has not been uncommon for as much as two years to elapse between the submission of an application and the approval of the draft plan. In certain circumstances it has been known to take a great deal longer, though the average time has now been reduced to about eight months. The standards of the Ministry are regarded by many people, particularly in Northern Ontario, as being unnecessarily high ("gold-plated" is a term which is often used) and it is a very common complaint in the north that Queen's Park insists on standards which may be reasonable in the south but which are quite inappropriate to the very different conditions of the Precambrian Shield. One consequence of the high standards imposed by the Ministry is that the costs of lots and the cost of housing are inevitably higher than they would otherwise be. It can, of course, be argued that in the long run there is a saving both to the homeowner and to the municipality, but it unquestionably limits the opportunity for many people to do as they can in some provinces; that is, acquire a small parcel of land fairly cheaply, accepting a low standard of services in return for the opportunity to have a lot and a house of their own. It is only necessary to make the kind of tour that I mentioned earlier on and look at the typical new subdivision on the outskirts of any Ontario city or town to recognize that there are many people who will never be able to move into this kind of environment.

I have mentioned two problems of the Ontario system, one being the time that it takes to get a subdivision approved, the other being the cost of meeting the standards imposed by the Ministry. These two factors together have inevitably led to a situation in which the small-scale developer has become virtually extinct, and the ability of the ordinary landowner to undertake his own subdivision has been almost eliminated. The complexity of the system places a premium on knowledge, experience and skill in order to allow an applicant to work his way through it. He must also be able to accept tying up his investment in land for as much as a couple of years before it shows any return, and he must, of course, have the financial ability to comply with the standards required of him. The result has been that residential development in Ontario has become completely dominated by a relatively small number of large firms which possess the capital, the experience and the expertise to meet the demands imposed on them by the subdivision control system. Again, while there may be advantages in such a state of affairs, the virtual elimination of the small operator and of the individual landowner as a factor in residential land development has unquestionably reduced the variety, the flexibility and the range of real choice open to the prospective home buyer.

What I have said so far will have given you the impression that the subdivision of land is totally under bureaucratic control throughout Ontario, but paradoxically there is in fact a gap in this pattern of control which is so wide that it has to be regarded as the Archilles heel of the entire system. I am referring to what is known as the "severance" or "consent." The principle of the severance is sound and reasonable. Its purpose is to allow, say, a farmer who wishes to sell his farm on retirement, but to retain a corner of it to build himself a house, to "sever" a few acres of land on which to do so; or his neighbour to give his newly married son a small parcel in a corner of the farm on which he can build. In such a situation, it would clearly make little sense to require the owner to go through all the complexities of having a plan of subdivision approved. It is thus legally possible in such a case for the "severance," as it is called, to be approved through a very simple process by the local Committee of Adjustment, the same legally appointed body which approves zoning variances, or by a county or regional Land Division Committee. This makes a great deal of sense, and I do not think any reasonable person would argue against the principle. The trouble is that the device of the severance has become grossly

abused throughout Ontario, simply as a means of enabling people to buy rural parcels on which to build city homes. Much of southern Ontario has become peppered with parcels of land, typically 2 - 10 acres in size, owned by commuters or used as weekend retreats. You may wonder why this is such a bad thing. Again, I am not challenging the principle of enabling those who wish to, and can afford it, to own a country home or a weekend cottage. The problem is that the consent is almost at the opposite end of the spectrum from the plan of subdivision in terms of effective public control. The Committee of Adjustment or the Land Division Committee has an almost free hand, and many committees have proved, in practice, to be unwilling to exercise any serious degree of control of severances. If the demand were small, perhaps this would not be important. In fact, it has been estimated that there may be as many parcels created by consent in a given year as there are through the normal subdivision approval process, and hence as many people living on such parcels as live on registered plans of subdivision. They have children who need schools; they have to be supplied with water; their sewage has to be disposed of; their roads need to be graded and ploughed, if not paved; and perhaps most important of all in some areas at least, they are taking some of the province's very limited amount of first-class agricultural land out of production. What makes this problem more difficult to solve is that because of the informality of the procedure there are no reliable records of the numbers and location of such parcels, so that its province-wide dimensions can only be estimated. It is possible for the Ministry to appeal the granting of a consent to the Ontario Municipal Board, but this is obviously a very clumsy and cumbersome device which can only be used in a relatively small number of cases and certainly is not a generally effective method of controlling severances. Even where the municipal official plan contains a policy regarding severances, as is becoming rather more common, it can be difficult to enforce on a Committee of Adjustment which is more anxious to avoid offending its neighbours than to enforce the policies of the municipal council.

I have saved until last the objection which, philosophically at least, may be considered the most serious failing of Ontario's subdivision control system. This is the fact that it is a provincial, rather than a municipal, responsibility. When I moved to Ontario from British Columbia I was accustomed to the notion that the control of subdivision was entirely a matter for the local council and had nothing whatever to do with the provincial government. As a result, I was familiar with municipalities in

which any landowner could go to the municipal hall with some sort of plan scribbled in pencil on the back of an envelope and have it stamped "approved" on the spot by the municipal clerk for a $2.00 fee. That way of doing things is certainly entirely inadequate to protect the public interest, as many B.C. municipalities learned to their sorrow, but when I moved to Ontario and realized how heavily the hand of its provincial government was laid on the whole land development process, I wondered if I had not moved from one extreme to the other. While I believe that a provincial government does have the ultimate responsibility for ensuring that the land of the province is used prudently, efficiently, and for the public good, I also believe that if the term "local government" is to have real meaning and substance, then it can only be through giving municipal councils the right to exercise genuinely autonomous authority over local matters, including the right, at least up to a point, to make mistakes.

Ontario has recently taken at least a tentative step in this direction through an amendment to the Planning Act which enables subdivision approval authority to be delegated to municipalities, and by actually delegating such authority in certain cases. The municipal councils which now replace the Minister in the approval of subdivisions are the "upper tier" or "federal" councils, where these exist, so that the approval power is still not in the hands of the ordinary local council. Last year's report of the Planning Act Review Committee recommended a much more radical step. It proposes that the provincial government should withdraw altogether from control of local planning matters except where a defined provincial policy is involved. While the government has not yet published its promised white paper on the Committee's report, the present indications are that it is not yet prepared to go quite this far in renouncing its control over land subdivision and other aspects of local planning.

The Province of Ontario almost certainly has the most elaborate system of subdivision control in Canada and probably in North America. It is a system which has now been in operation for over 30 years and has been constantly amended, elaborated and refined. What lessons can other jurisdictions learn from it?

In one respect, at least, the Ontario system cannot be challenged. It is based squarely and unshakeably upon the principle that the subdivision of land is not just a run-of-the-mill private transaction nor a routine bureaucratic function, but an act of fundamental importance to the public welfare, whether we think in

terms of the individual, of the municipality, or of the broader regional or provincial community. In my opinion, the acceptance of this principle must be the very foundation of any system of subdivision control. Whatever criticisms I may have of Ontario's system in many of its details, I would unhesitatingly and wholeheartedly support its dedication to this principle.

This having been said, however, I believe that a close review of the Ontario system can provide a good many lessons in how not to do things as well as in how to do them. Some of my concerns with the way things are done in Ontario have been made fairly clear in what I have said already, and I do not propose to repeat these points. Instead, I would like to make the general observation that what emerges very clearly from the Ontario experience is the great difficulty of maintaining the right balance in a number of respects in creating and operating a system of subdivision control. Let me elaborate on this point a little.

First, there is the obvious difficulty of finding a reasonable balance between public and private rights: to be more explicit, between the rights of the community and of the future residents on the one hand, and the rights of the landowner on the other. I don't think I need to elaborate on this, because it is a very obvious point and because one's views on it depend very largely on one's own personal philosophy. Certainly there are people who are prepared to accept the principle that the private landowner cannot have an unrestricted right to do whatever he pleases with his land, but who nevertheless believe that Ontario's controls are so stringent as to constitute an unwarranted intrusion upon his rights. You will have to form your own opinions on this question.

Secondly, there is the question of the proper balance between the roles of the provincial government and of the municipality respectively in relation to subdivision control. My view on this matter is that while the province cannot abdicate the ultimate responsibility for ensuring that its land is not used in a way that is contrary to the public interest, it need not, and perhaps should not, keep to itself the exclusive right to regulate, at least where it is satisfied that a municipality has an adequate general plan, sound control by-laws, and professional staff able to administer them.

I would be prepared even to go a little further, and suggest that perhaps the onus should be on the provincial government to satisfy itself that a municipality does not have the will or the

capability to control the development of land adequately before itself assuming the direct responsibility. To repeat what I said a few minutes ago, respect for the principle of local self-government implies a measure of willingness on the part of the provincial government to allow elected local representatives to make decisions which the provincial government may not regard as being in the best long-term interests of those who elect them. On the other hand, it must also be recognized that local decisions which may be perfectly sound and rational in terms of the interest of the voters and landowners of today may not be at all in the interests of the citizens of tomorrow. Likewise, decisions which make perfectly good sense for the particular municipality in which they are made may not be consistent with the interests of its neighbours, or with those of the people of the broader region, or of the province as a whole. In my view, there can be no question that the provincial government must reserve to itself the right and the willingness to intervene in such cases.

The third kind of balance which must be struck is between the responsibility of government, whether provincial or municipal, to protect the interests of the community and the individual citizen, and its responsibility to allow the latter the maximum amount of freedom consistent with such protection. Here I have in mind not so much the original owner of the land who wishes to make a profit by subdividing it, but rather the individual who wants a house, or a piece of land on which he can build one. Not many people would agrue against the need for subdivision standards designed to protect public health and safety, but beyond this point the issues become much less clear. Most people would probably agree that 66 ft. paved streets, sidewalks, storm sewers and street lights are nice to have for those who can afford them, but for those for whom the choice may be between narrower road allowances, gravelled streets, and ditches, and abandoning any prospect of owning their own homes, can we really be confident that it is right to insist on the subdivision standards which would be expected by middle-class businessmen and professionals? With respect to such matters as these, it may not be unreasonable to assume that a local council may have a better understanding of what is appropriate to its own area and its own people than does a relatively remote provincial government and its administrators. Once again, however, I must point out that there is another side to the question, in that the public has a right to be protected both from standards which are dangerously low, and from standards which are so high as to operate, in effect, as exclusionary devices.

The fourth kind of balance which must be struck is between what is gained or protected by high standards and what is lost by

applying them. If we look at the Ontario experience, it is fairly easy to see what has been achieved by its system of subdivision control. The problems, difficulties and costs which it creates are less evident but no less real. I have already pointed out that when securing approval to a plan of subdivision is a matter of months if not years, a great deal of experience and expertise, and inevitably a large financial investment, land development inevitably becomes dominated by large firms, the cost to the house buyer goes up very substantially, and the range of options open to him is simultaneously reduced. I don't think these consequences were ever intended by the well-meaning people who presided through the past thirty years over the evolution of the Ontario Planning Act and the subdivision approval system which it created, but they have happened nonetheless, and I would recommend that any jurisdiction which contemplates initiating a similar system should give this lesson very careful consideration.

What I have been saying in the last few minutes really amounts to this. Establishing the principles of a comprehensive system of subdivision control really boils down to the question of trade-offs - the trade-offs which legislators, administrators and planners are prepared to make and willing to let others make. The fundamental dilemma of the democratic system is that of reconciling the right of the individual to determine for himself what he wants to do with his life and his property with the right and responsibility of the community to protect its interests collectively and those of its members individually. We are now getting into the realm of political philosophy, which may seem rather far-fetched for a discussion of such a down-to-earth subject as the subdivision of land, but I make no apology for it, for the implications of land subdivision are so profound that they do in fact raise philosophical issues. I don't think it is unreasonable to say that the criticisms which may be levelled at the Ontario subdivision control system arise in large measure from the fact that, like so many other political and bureaucratic creations, once established, it took on a life of its own. It evolved step by step in a way which may have seemed entirely reasonable as each step was taken, but which evaded the fundamental questions of principle which it raised. Hence, there eventually developed a system of control which is so stringent that it is at least not manifestly absurd to question whether from the broadest social viewpoint its failings may not outweigh its benefits. At the same time, the whole purpose of the system has been partly undermined by a parallel process, the severance, which was largely ignored until it became an obvious practical problem, because it never became part of the system at all.

In short, while the machinery of the Ontario subdivision control system is excellent, its fundamental weakness is that this machinery does not rest on any general philosophy of land management. It could even be argued that Ontario has a stringent, centralized subdivision control process as a substitute for such a philosophy. But no bureaucratic machinery can substitute for clear, properly thought out goals and policies, however necessary it may be to achieve them. To other provinces which might seek to learn from Ontario's experience with subdivision control, then, I have a concluding word of advice. Decide first on your goals and guiding principles for the management of your land and the governing and planning of your local and regional communities. Then, and only then, you may find something of value to you in Ontario's subdivision control practices.

SUBDIVISION CONTROL IN ALBERTA

Noel Dant
Consultant to the
Alberta Provincial Planning
Appeal Board

I am going to take a different slant with respect to Alberta's experience in subdivision regulation. I am going to outline the history of the subdivision control system that we have in Alberta and trace the evolution, which is indeed what has happened over the years, to what we have now.

The first stab at subdivision control in Alberta appeared in regulations made under the now extinct Public Works Act of 1929. The regulations on subdivision matters were fairly comprehensive. They had, what is quite common now, tentative plans and final plans. Proposed uses of new parcels, which were in any application, had to be designated and these uses were limited to the basic four: residential, commercial, industrial, and agricultural. If the land to be subdivided lay within two miles of the boundary of a city, town or village, prior approval to the plan had to be secured from the city, town, or village.

Reserves (land for public purposes) were required for any parcel of land over five acres that was subdivided. A maximum of 10% of the gross area was required as a reserve. There was no reserve if the parcel to be subdivided was less than 5 acres. There was also a minimum requirement of 2 acres. One half of the reserve was to be used as park, and the other half for such public use as the Minister of Public Works determined. Title was held by the Crown except where allotted to a school authority. They also included a few standards regarding streets; e.g., main streets had to be 80-100 ft. wide with all others being 66 ft. wide. It also included required minimum sizes according to use. Where no zoning by-law existed, the uses proposed in the plan were "secured" by means of zoning caveats affixed to the titles of the new parcels that were created.

Signs were included in this regulation. Approvals were made by the Minister of Public Works, who also controlled highways and public roadways. He could, incidently, waive any regulation or the requirements of any regulation.

This regulation (1929) was slightly amended in 1931, 1934 and 1942.

In 1945, a new set of regulations was adopted under the mandate given in the then new Town Planning Act of 1942. These regulations supplemented the subdivision regulations of 1929, and were called Subdivision Regulation No. 2. The strange thing

was that the 1929 regulations were under the mandate of the Public Works Act and Regulation No.2 was made under the mandate of the new Town Planning Act. The No.2 Regulation particularly had reference to the subdivision of land adjacent to highways and secondary roads, and it also brought in additional provisions regarding signs. In particular, they banned all signs within the visible distance of a numbered highway, except for destination signs or land adjacent to highways.

In 1949 a very short new regulation was added which simply included:

> "All land to be subdivided shall be herewith suited to the purpose for which it is intended".

In this context, a report was required from the applicant to the SAA*, who is still the Minister, which presumably was to justify the necessity for making the subdivision.

Interestingly, the report had to include information on the nature of the soils, the possibility of providing surface drainage, and how light, water, sewerage and other services were to be supplied to the land to be subdivided. This report had to be included along with the application to the S.A.A. Also, where it appeared to the Minister that the whole or any part of the land proposed to be subdivided was not in the public interest, the Minister could refuse the whole or any part of the subdivision.

In 1951 a brand new set of regulations was adopted, in which the preamble to them read as follows:

> "Whereas having regard for various difficulties which have been met within administering the said regulations (i.e. the so-called Regulation No. 2) and to the evident desirability of dealing with the matters aforesaid in a more detailed and explicit way - the following regulations shall be substituted for those hitherto in force."

Incidentally these new Regulations were mandated by the 1942 Town Planning Act which had been suitably amended in 1949 and

* Subdivision Approval Authority

its title changed to The Town and Rural Planning Act.

This new substituted Regulation dealt exclusively with highways and land adjacent to highways, access to same, signs adjacent to highways , setbacks of buildings, removal of tree growth for vision purposes, even the architectural style of development along the highways or subdivided land.

The complete banning of signs was not in this revised Regulation. The Regulation contained provisions regarding signs which said:

> "on land or premises in the vicinity of any declared highway, the erection or display of signs or other forms of advertising matter within visible distance of a highway is hereby prohibited except as may be otherwise authorized by this Regulation."

The exceptions included:

(1) directional or (2) informational signs.

The informational signs could apply to industries and businesses, other than a retail commercial type; simply stating the name of the industry or business (no advertising material) and of a stated maximum size 10' x 50'.

It must be remembered that the Crown retained titular ownership to all highways and secondary roadways even where such passed through cities, towns and villages and in these latter cases retail business signs could be erected on land or lands adjacent to the highway without provincial approval (in actuality, they were in most cases controlled by municipal sign by-laws).

As to so-called national advertising signs, the Regulation has this to say:

> "No sign intended to promote the sale of a particular brand of soft drinks, cigarettes, tobacco, gasoline, oil, tires, tea, coffee, or other goods customarily advertised on a national scale shall be erected on any land within visible distance of any declared highway unless the manufacturer of the product or the sales agent has obtained a license therefore from the Provincial Planning Advisory Board."

Notwithstanding such condition, I understand that no such licenses were ever granted by that Board on land outside the incorporated urban municipalities. Within incorporated municipalities, where the municipality had a sign bylaw, licenses or permits for these kinds of advertising signs and billboards were obtainable from the local building inspector or development officer rather than from the Provincial Planning Advisory Board.

In 1953 the first major rewrite of the now outdated 1929 Subdivision Regulations occurred. One of the major innovations in this Regulation included a provision which stated:

> "Land shall only be subdivided and subdivision shall only be designed in accordance with the following rules."

There were 12 rules altogether and most but not all of these rules related to standards, i.e. the classification of public roadways into:

arterial roads
major thoroughfares
shopping streets
minor roads
service roads
loop service roads

- 1/2 streets and other quaint classifications giving minimum right-of-way widths in each case,

- maximum lengths in some cases, street gradients, designations, numbering and a lot of what's now considered unnecessary details of a restrictive nature.

- Other rules specified dimensions of lots and parcels, the layout of same (design of a subdivision) and so forth.

Notwithstanding these standards or rules, there were also provisions where exceptions could be made to the rules and these were provided for in the Regulations under a Table which was broken down into a number of cases, and explained by small illustrated diagrams with appropriate text describing the exception - all very strange in a legislative document such as the Regulation and all very horribly complicated.

As the Town Planner for Edmonton at the time, I had to work with and under this Regulation and its detailed intricacies - as practically all subdivision design was in the first instance done by the City Administration itself in the early 50's, and incidentally approved by the Province until about 1952 and 1953.

It must be noted here that the Town & Rural Planning Act received its first major amendments which introduced more modern concepts, techniques and mechanisms with respect to the reorganization of official planning agencies, approving authorities, control of the subdivision of land and control of development on land. For instance, the establishment of District Planning Commissions (very similar to the N.S. approach) was introduced, as was the introduction of Development Control of land as opposed to zoning control and other matters.

Another major change in the 1950 amendments to the Act was the provision whereby a City could establish a Technical Planning Board, composed entirely of City officials. One of the functions of such a board was reflected in the new Subdivision Regulations, where the Minister was dropped as the Subdivision approving authority in favour of the Director of Town and Rural Planning (in Municipal Affairs) and to such Technical Planning Boards and District Planning Commissions as designated in Schedule 2 of the Regulation.

Schedule 2 designated the T.P.B.'s of the Cities of Edmonton and Calgary, and the District Planning Commissions of land contained in the established district area less the areas within the City boundaries of Edmonton and Calgary.

The S.A.A. therefore at that time in Alberta were:

The Edmonton T.P.B. having jurisdiction over land in the City of Edmonton
The Calgary T.P.B. having jurisdiction over land in the City of Calgary
The Edmonton DPC having jurisdiction over land in the District of Edmonton
The Calgary DPC having jurisdiction over land in the District of Calgary

and for all other land in the Province , the Director of Towns and Rural Planning (Provincial).

This was the first step taken by the Province to provide partial delegation in subdivision approval from the provincial level to municipal levels , (the DPC's being composed of aldermen and councillors appointed by the Councils from the different municipalities who had agreed to become "members" of the DPC.)

With this delegation of authority to determine applications for subdivision, it was natural for the amended Act to provide for appeals from the decisions of the different S.A.A. and this function was vested in the Provincial Planning Advisory Board; whose decisions were final short of subsequent appeals to the Appellate Division of the Supreme Court of Alberta on matters of law and jurisdiction only.

In spite of these major amendments to the Town and Rural Planning Act in 1950, the mandate for writing Subdivision Regulations was left in the Surveys and Expropriation Act where it had lain since that Act was enacted at the time when the old Public Works Act was repealed.

At the time I joined the Provincial Government in 1960, this sticky wicket kind of situation legislative-wise was in the throes of being ironed out and the Minister of Municipal Affairs provided the Director of Surveys and myself with the challenge to write a new Planning Act, the only terms of reference for which he gave us was:

(1) to take the Minister off the PPAB

and

(2) to provide the mandate (and I should say a more elaborate mandate than formerly) for writing subdivision regulations.

What was to be called the new Planning Act was enacted in 1963 and for the benefit of our legal listeners here, the Surveys and Expropriation Act was repealed at the same time and never reared its head again.

Thus mid 1963 saw the adoption of a brand new set of Regulations, more comprehensive than ever before and I like to believe that first vestiges of the land management approach to subdivision began to be manifested in legislation. This, of course, had to be related to the new statutory plans which the new Act provided for - namely, the preliminary regional plans (mandatory

for the then six (6) established Regional Planning Commissions) and permissibly for the general plans of the municipalities.

The 1963 Regulation was broken down simply into 3 Parts.

Part I dealt with the method of making applications for subdivisions by plan or description (metes and bounds) (because of the speed of the process of the latter - this method was soon colloquially given the label of 'leaps and bounds').

Thus Part I dealt solely with the procedures required to attain tentative approval; appeals therefrom; and endorsement, (equivalent of final approval).

Part II dealt with general requirements applicable to all applications such as the suitability of land and the location for the prospective development:

- conformity with local planning measures - particularly the general factors governing design
- access to new parcels to be created
- construction of public roads and utilities
- provision of, amount, and location and designation of reserve (i.e. dedications)
- the uses permitted of reserves (and was spelled out in the Act i.e. public parks, public recreation areas, school sites and buffer strips between adjacent and in compatible uses was very broadly interpreted)
- also a new item of reserves - 'extra' i.e. where the land was undevelopable for any private development eg. drainage courses, floodplains, steep slopes and waterfront subdivisions
  (also very broadly interpreted by the subdivision approving authorities in their practical application of it.)

Part III dealt with design of subdivisions according to the use intended.

It dealt with layout and dimensions of parcels, access to each, and had groups of sections related to specific land use

i.e. residential
commercial
industrial
county residential
small holdings
resorts

It also had provisions dealing with subdivisions in the vicinity of highways including those for highway commercial use.

Although quite a comprehensive and readable regulation, on looking back it was far too specific, rigid and detailed. It gave little direct discretion to a S.A.A. although there was some. Perhaps amelioration or some degree of flexibility was provided in the new Act where the Provincial Planning Appeal Board was empowered to waive any requirement of the Regulation upon application to do so from a S.A.A. but not from the applicant. This, however, was another hoop that had to be gone through which tended to lengthen the processing time of the application.

As to the process itself, the Act provided for a "deemed refusal" to ensure that the processing time was limited, i.e. if after 60 days from receipt of application in the case of the large majority of applications and 120 days in the case where the land to be subdivided was adjacent to a water body the applicant had not received a decision, then it was considered refused and he could appeal to the Provincial Planning Appeal Board.

Although this worked in the simpler applications to subdivide, it didn't in the more complicated and extensive applications. The Act was originally worded in such a way that when the specified time period was up and no appeal application was made by the applicant the S.A.A. went on processing the application. In the fullness of time, the government began to get an under-current of protests from applicants who had to wait 3 months or more for decisions.

The S.A.A. authorities would respond by claiming that the more complicated applications didn't provide the S.A.A. with enough information and in seeking this additional information (e.g. the availability of potable water on the land to be subdivided, etc., etc.) and receiving it from the applicant the additional processing time was necessary.

In an attempt to remedy this kind of a thing, the government did two things, one wise and one extremely unwise as it later transpired.

(1) A more comprehensive application was introduced covering essential information of each application required by the S.A.A. so that it could come to a reasonable and quicker determination of the application, and

(2) it amended the Act to say in effect that the 60 days or the 120 days as the case may be was measured from the date of receipt by the S.A.A. of the final and complete application.

This was just what the S.A.A. wanted - an excuse to go back to the applicant time and a again and request from them information until it finally came to a moment in time, when the S.A.A. was prepared to declare that the final and complete application had been received. Another matter that used up an unholy amount of processing time, in many cases, was the reference by the S.A.A. of the complete application to a number of referral agencies, Departments of government, the councils,for their comments on the application - under the regulations some of these referrals were mandatory and others at the pleasure of the S.A.A.'s

If I haven't bored all of you by this time, we finally come to the current Subdivision Regulations. If I may say so, they exhibit a remarkable manifestation of the evolutionary process in its eventual make up and corporation.

This Regulation was prepared along with a couple of other regulations between the time of the enactment of the new Planning Act 1977, on November 15, 1978, and the date of its proclamation on April 1, 1978 (4 1/2 months).

It has only 37 sections compared to the 69 sections of the former regulations. It is only 8 1/2 pages long compared to the 35 pages of the former. It is purposely far less regulatory and less restrictive than its predessor. It is flexible, giving far more discretion to the S.A.A. than formerly. It is more land management oriented than formerly. It has better continuity of provisions and yet, it does contain some necessary teeth.

Although the former Act expanded the delegation of the powers of a subdivision approving authority to all 8 Regional Planning Commissions (the successors of the old District Planning Commissions), the new Planning Act, 1977 empowers the Minister to authorize a Council of a municipality to be S.A.A., where certain circumstances prevail, i.e. staff capability , official plans and general municipal plans etc.

Up to now, the minister has had only two applications from municipalities to be their own S.A.A.'s. They are the City of Lethbridge and the fairly new City of St. Alberts, just outside

Edmonton. The new act also confirms the status of the City of Edmonton and Calgary as being their own S.A.A.

In addition, the Act empowers a Council so authorized to delegate this function and authority to its Municipal Planning Commission (the successors to the old Technical Planning Boards) or even to one or more members of the Commission.

It also empowers a Regional Planning Commission to delegate its authority as a S.A.A to one of its Committees, or even to its Director.

The process of "deemed refusal" is carried forward in this new Act. However, it has been changed somewhat. The 120 day period for lands surrounding water bodies has been dropped, the 60 day decision period now applies to all subdivision. If, after the 60 days are up, and the applicant agrees, this time may be extended. If a decision has still not been reached after the extension time, the applicant may appeal to the Provincial Planning Appeal Board. I must say that there have been a few instances where the local S.A.A. have purposely allowed the decision time to lapse, forcing the Provincial Planning Appeal Board to make the decision.

This 60 day processing time is broken down into the following stages:

Day 1-3: S.A.A must acknowledge receipt of the application and refer copies to 3 mandatory agencies - the municipal council, the school authority and the Board of Health. Other government departments are notified where applicable.

Day 3-7: S.A.A. reviews application to find if there are any deficiencies in it, and may request further data to correct any deficiencies in the application.

Day 7-60: S.A.A. considers all reports submitted by the various agencies and makes decision.

The decision can be of three kinds: unconditional approval, approval with conditions, refusal. If the application is approved, the applicant may begin the laying out of lots, etc. When this is completed, the applicant receives endorsement from the S.A.A. Similarly, if the application is approved with conditions, i.e. contractual agreements etc.,the lots are laid out, contracts signed etc., then endorsement isobtained from the S.A.A.

If the application is refused the applicant may appeal to the Provincial Planning Appeal Board. The Board then becomes the S.A.A. and is empowered to make decisions regarding the application e.g. it can uphold the appeal; it can uphold the conditions of that the S.A.A. applied to the application, it can remove those conditions and put in its own, and, of course it can refuse the appeal. If the appeal is refused, the applicant has the opportunity to appeal to the Appellate Division of the Supreme Court of Alberta on matters of law and jurisdiction only.

Finally, I should just like to add that Land Management is to be achieved in Alberta through the policy orientated Regional Plan. Our Municipal Plans (mandatory for all urban municipalities over 1000 population and rural over 10,000 population) are implemented by the related, and I hope enlightened process, of land subdivision provided for in the new Planning Act and the new Subdivision egulations and through local land use bylaws with respect to the development of land.

DEBATE ON SUBDIVISION CONTROL

Question: Resolved, that subdivision of land should be under complete municipal jurisdiction and control.

Moderator: Sheryl Kennedy, CPD, Department of Municipal Affairs, Province of Nova Scotia.

Proponents: Affirmative:

Michael Cleland - Planner, Department of Development, Province of Nova Scotia

Nigel Richardson, MCIP - Consultant to the Royal Commission of the Northern Environment (Ontario)

Proponents: Negative:

John Cameron - Director of Research, Department of Municipal Affairs, Province of Nova Scotia

Noel Dant - Consultant to Alberta Provincial Planning Board

Michael Cleland

The main point, on which I think you can rest the argument in the affirmative, is that subdivision relates intimately to the use of land, and since land use issues are traditionally a municipal responsibility, then their control must remain with the municipality. Subdivision control relates the provision of sewer and water services, the provision of schools, and the provision of parks. Thus, it relates very much to land use issues in general. A point that has been made is that subdivision, under the provincial Planning Act, is inadequately related to land use. Keeping it at the municipal level, I think, is one way of ensuring that this linkage is improved. Subdivision obviously relates very strongly to the issue of taxation, since subdivision in a large measure determines or helps to determine what the tax base of the municipality will be; they are the ones that have to pay for and provide the services and also receive the taxes, therefore, the municipality is logically the body which should have the authority.

My second point relates to accountability to the public. The municipal level is the one which is most directly accountable to the public. If there are discretionary elements in subdivision control this becomes that much more important. For example, we talked this afternoon about the possibility of things like minor

variances within subdivision regulations. If this kind of discretion enters into it, it may have to be handled by elected bodies and it is logical that it should be the local Council. In the subdivision process there is the need for face to face contact between the person who is applying for a subdivision and the person who is administering the regulations. Municipal control is necessary to speed the processing and improve two-way communication since it is not clear to the person doing the subdividing, in most cases, exactly what the requirements may be. Again, this is particularly important if the procedures are at all discretionary. The problem of outside input to the subdivision process could be handled quite readily at the municipal level by consultation with the appropriate provincial agency, therefore, it doesn't necessarily follow that the provincial interests would not be looked after. This is especially true of subdivison handled through a vehicle such as a subdivision bylaw which must be approved at a provincial level or a bylaw which specifies consultation with agencies such as the Department of Health, Department of Environment, or the Department of Highways.

Finally in summary, there is a need in subdivision control for some agencies to co-ordinate the diverse inputs, not only from subdividers, but from the municipalities and from the various other agencies which may have an interest. This is obviously going to be most effective at the local level due to the ability to maintain contact, not only with the subdivider, who is in the local area, but quite frequently with the local office of the outside agencies; such as, the Highways Department, Public Health, and so on. If you have a local agency which does this co-ordination it seems to be most efficient to use local municipal offices (not only for the office space itself) since the job is usually done or can be done by the local Development Officer who is also responsible for other aspects of land use.

John Cameron

The reason why subdivision control should be a provincial responsibility is very simple; the main interests affected by the subdivisions are provincial and not a local matter at all. We are dealing with land holding patterns that are of primary importance to the Departments like Highways where they are providing roads at great public expense and that the access system provided by the Department of Highways is crucial to the economic development of the whole Province. There are also other problems that crop up in subdivision such as possible health problems; on-site sewage disposal, and related matters which fall within the jurisdiction of the Department of Health, again a province wide concern

and not the conern of one particular municipality. Drainage, roads, pollution and other problems and physical characteristics concern the jurisdiction exercised by the Provincial Department of Environment. These are indications of some problems. Another problem that comes up in subdivison control is watershed protection, where one municipality may not care about the needs of a neighbouring municipality. These are things that have to be controlled and co-ordinated at the Provincial level. Now, at the present time, either there is a great coordination problem or more frequently these legitimate Provincial concerns are ignored. The result is filthy, diseased developments that no one can get to.

Then, of course there are Provincial interests other than these main ones. You have provincial responsibility for the Registry Act, meaning that there is a strong Provincial interest in securing an orderly and traceable system of title creation. Again, properly surveyed lots are consistent with the Attorney General's responsibility for law and order. These are just examples of the overriding provincial interests in subdivision control and briefly you are talking about a system where the real interests are supra-municipal and not restricted within the confines of a narrow municipal boundary. Some of the points that have been raised, for example, are that land use matters are all local, and of course this is not true; they are not all local. On the other hand subdivision control is not all that closely related to the use of land; it has to conform to land ownership patterns.

There are thosewho debate which level of government is accountable. Of course, I've enjoyed the little approach about by-laws being subject to approval at the provincial level because that means that we don't have subdivision control at the local level if we are depending on that kind of a situation.

I think really this goes to prove my point and there are other aspects of this: problems of discrimination or just plain tossing coins in decision-making; we can't allow the subordination of the Province's legitimate interests; then again we have a need to coordinate diverse inputs, most of which come from the provincial level, and the various concerns that arise there. For those of you who aren't really convinced, by those sound reasons, we have what has sometimes been described as the prime reason why subdivision control really belongs at the provincial level and that comes from those who would agree that subdivision control is really rather useless and unnecessary, and under those circumstances, where better?

Nigel Richardson

First, on a point of privilege, I would like to point out that the

Honourable Member for Sydney had done his best to undermine my efforts this evening with liberal applications of alcohol, so if my presentation is a little bit uneven please be assured that the fault is not mine.

Now, I think that my Leader on my left has made such an able presentation that it makes it really very difficult for me to add to what in my opinion is an absolutely irreputable case in favour of the municipal control of the subdivision process. To it, I think I only want to add one or two very brief points. This government, as I am sure you are all well aware, has always staunchly upheld the principles of municipal autonomy and in my view that is absolutely right and proper. We are all familiar with the catch phrase that the municipality is the "Creature of the Provincial Government", but in fact, as a matter of principle, it is right and proper that the elected representatives of the people at the local level should have the responsibility for making the decisions which affect their own citizens, their own ratepayers, and their own electives. Some of you may have had the misfortune to endure the speaker last night who was pretty tiresome, but he did make one or two points that I am compelled to agree with and one of those points is that the municipal government has no reality, has no substance, it is a farce, it is a facade, unless the elected municipal council has the right, the genuine right, to make decisions and make those decisionsstick that affect its own territory and its own people. It has the right in doing so to make mistakes. I am firmly convinced that it is not proper -- it is not in accordance with our democratic heritage -- for the Provincial Government to intervene to protect municipal governments and elected municipal Councils from every possible error which they may make, and let's face it, they do make some. Who are we to say that the Provincial Government doesn't occasionally make mistakes. Are we really going to assume that some bureaucrat sitting in Halifax is better qualified to judge the quality of the subdivision in any part of this great province, than the prople who are on the spot, who know the territory, who know the people, who know the land, and who know the circumstances. It seems to me that it is the height of arrogance to take such a position.

Now, please understand me, I am not suggesting for a moment that the Provincial Government has no interest whatever in the subdivision process much though it may be against the grain, I am compelled to agree with the last speaker that there is a Provincial interest. It seems to me that the Provincial interest can be adequately safe guarded if the Provincial Government has the "guts", let us say, to decide for itself and to lay out for the benefit of the public at large and for the municipalities in particular what is objectives are or what its vital concerns are and to insist that those concerns, the concerns which indeed do affect the people of the Province as a whole, and there are some, I am perfectly

prepared to grant that, and to ensure that those concerns are respected. However, those concerns are quite specific and quite limited and it is well within the competence and I am certain that it is within the integrity of the elected municipal council to ensure that those concerns are indeed respected. If they are respected, I can see no reason in the world why beyond that point it should not be up to the municipality to decide how its lands can best be used, how its territory can best be subdivided, and how the interests of its own population, its own citizens,can be best safe guarded.

Noel Dant

I think I would like to, before mentioning the few points I have here against the resolution, draw you attention to what I think is the operative words of the resolution; "under complete municipal jurisdiction and control", and I just stress that wording.

I am going to mention a few points which I found, not exactly to my dismay because it seems so obvious, my collegue has already covered. But in saying that, I assure you there was no collution between us before we came down to this table. And I would also say that if there is any logic left in this world you will have to believe these points which I am about to make. First of all, it must not be forgotten that it was the Province that created the municipalities, albeit the Province has given certain powers to the local councils through appropriate legislation. Unless the Province is prepared to grant powers of subdivision approving authority to a local council, then it has to retain that job itself.

The second point, is that several government departments have interests and concerns in almost any proposed subdivision, maybe not all but in most of them. These concerns obviously are involved in the specifics of the proposed subdivision plan, and as I have known from my own experience, there is no surety that if a municipal council or a municipality had been given the subdivision approval authority function, there was no surety that they would consider these departmental concerns and interests. Surely that is another good reason why the power to approve or reject or reach decisions on subdivision applications should be retained by the government.

The third point is the co-ordination of the specific departmental interests and concerns with respect to the proposed subdivision of lands and indeed local municipal concerns and the concerns and interests of other local bodies like health units or boards of health at local levels, etc. As all these concerns have to be co-ordinated before coming to a decision on an application to subdivide, contrary to what my colleague on the other side

of the table has just recently said, I believe that this co-ordination can only be achieved and to be the most effective co-ordination that can be achieved would have to be at the Provincial level, rather than vice versa, i.e. at the Municipal level. Once again I claim that the Province should be the subdivision approving authority.

Another point is that, as you are well aware, there are sometimes applications made to subdivide land adjacent to or in the vicinity of some regional, provincial, or even a federal facility or major investment. If this power to approve subdivisions of land in these kinds of situations was given to the local municipalities, I would suggest that the decisions, particularly when these facilities may pass through parts of several municipalities, that these decisions under these circumstances could only come up sketchy and possibly ununiform as between one municipality and another which has land adjacent to these facilities. Such decisions by local municipalities would probably take the local concerns and interests into consideration rather than the larger provincial or regional interests. This is obvious because as soon as subdivisions are approved the next step is that development will occur and one thing local municipalities are anxious to get is its tax dollars out of that development as soon as it occurs. So that when there is repeated incidence of subdivisions adjacent to these facilities; such as, to give you some examples, pipelines, utility corridors, highways, which we have already mentioned, the land around airports or extremely near airports, and things of this nature, when the facilities that we are talking about penetrate through parts of several municipalities, if for no other reason than to have some uniformity of decisons, it seems logical that the Province has to be the subdivision approving authority. Other examples are lands which are to be subdivided in a belt around lakes which in many cases would effect more than one municipality's area of jurisdiction. To get some uniformity in decisions on such subdivision land, in such locations, it seems that the logical agency to make the decisions is the Provincial Government.

And finally, I would maintain that tradition can exert a powerful influence on activities. If this tradition is not found wanting, it should be the governing rule of the future. Those provinces which have already, through appropriate legislation, made themselves the subdivision approval authority, they should maintain this authority in the future.

Rebuttal

Mike Cleland

I would like to start off by picking up on Mr. Cameron's first point

which was that the main interests involved in subdivision control are Provincial. I would say this is certainly not true. For the most part, as I pointed out, subdivision is a land use related issue. Land use for the most part affects municipal interests. It's true, Provincial interests such as highways, central services, and other things are affected, but for the most part this is through cost sharing mechanisms. The actual provision of the facilities and maintenance of the facilities is still primarily a municipal responsibility. The fact that provincial interests may be ignored through the subdivision procedure as it now takes place is due to the inadequate legislation under which subdivision now exists. If the legislation were constructed in such a way as to permit subdivision regulations or bylaws to be more sophisticated, they would take into account more criterion. Presumably more diverse interests and more complex interests could then be taken into account. The point was made that the Provincial Government would be unable to guarantee that its interests are looked after if subdivision control is in municipal hands. I would assert that they can't do so anyway in may cases. Frequently the Provincial Government has failed to define its interest; its interests very often conflict internally among departments of the Provincial Government. As a consequence, the process within Provincial Government has often lead to delay and confusion. I think that the Ontario case is a reasonable example of this situation. The cost to everyone, whether to the public, or especially to the subdivider, are such that they probably could not be justified in most cases by the small gains that are made.

On the subject of co-ordination, I would suggest that co-ordination can be effectively achieved at the local level, contrary to what Mr. Cameron has asserted. Co-ordination at the Provincial level is more likely to end with delays and confusion than it is to achieve effective co-ordination.

At the conclusion of the debate a ballot was taken and the results were are as follows:

Affirmative - 59
Negative - 26

TECHNICAL SESSION SUMMARIES

SCOPE

Each panelist dealt with the new (Spring 1978) On-Site Sewage Disposal Regulations, but each examined it from a different perspective.

- An examination of the events which led to the establishment of the first On-Site Sewage Disposal Regulations for the Province of Nova Scotia, and the evaluation of the regulations. This finally led to the drafting of new regulations.

- The On-Site Sewage Disposal Regulations were examined in some detail, in particular, how the 1978 legislation differed from that of 1975 and how this improved the regulation of these systems.

- The legal responsibility of the Board of Health under the new Act was indicated.

- The jurisdictional responsibilities of the On-Site Sewage Disposal Regulations and Subdivision Regulations were examined and their effect on each other was explained. Some examples of court cases based on these sometimes conflicting pieces of legislation were given.

PANEL

Ed Tupper - Administrator of Environmental Health, Department of Health

Peter Casey - Director of Public Health Engineering, Department of Health

Chris McCullogh - Solicitor, Department of Attorney-General Assigned to the Department of Health

Janet Willwerth - Solicitor, Department of Municipal Affairs

PANEL REMARKS

Mr. Ed Tupper (Department of Health) set the scene for the establishment of the new regulations by giving a chronology of the events which led up to its enactment.

Prior to the 1960's the septic tank approval was governed by the Health Act. The approval process sometimes involved some regulations and guidelines, but more often than not, it was based on the personal appraisal of the Public Health Inspector; the Inspector's recommendations were usually followed by the Board of Health.

In the 1960's, many municipalities developed their own regulations concerning on-site sewage disposal system specifications (i.e., size of the tank, disposal bed dimensions, etc.) but this didn't tie into any province-wide scheme, nor was there any direct co-ordination amongst municipal units. As would seem natural, the Municipality of the County of Halifax had the most sophisticated regulations.

In 1971 there was a push to make order out of chaos and establish province-wide regulations. Initially there was an attempt to establish criteria to assess building lots (i.e., soil type, normal water table heights, depth to bedrock, etc.) but these were only guidelines, and they were not, at least at that time, entrenched in the law. The Department of Health, over the next four-year period (1971-1975), attempted, through consultation at the municipal level, to establish legal standards. Draft regulations were drawn up. In desperation some municipalities adopted these regulations while still in draft form.

In 1975 the provincial government adopted the regulations respecting On-Site Sewage Disposal Systems. In many localities, these provincial regulations were the only form of subdivision control and this often caused problems.

Like most legislation, these regulations were found, in time, to be deficient in some areas. By early 1977 rigorous examination of the On-Site Sewage Disposal Regulations of 1975 had begun. After extensive consultation at the municipal and provincial level, new legislation came into force in the Spring of 1978.

Ms. Chris McCulloch (Department of the Attorney-General) gave a brief run down of the legal responsibility of a Board of Health under the new regulations. The Board is accorded the duty of granting permits to individuals and developers for the installation of on-site sewage disposal systems in compliance with the regulations. Their responsibility extends from the initial approval of the lot and the proposed design of the sewage disposal system, to final approval of the installed system. Besides this a Board is responsible for the granting of permits to install temporary on-site sewage disposal systems and permits to firms engaged in the business of septic tank cleaning.

Ms. Janet Willwerth (Department of Municipal Affairs) discussed

the relationship between the On-Site Sewage Disposal Regulations and Subdivision Regulations. It was indicated that although On-Site Sewage Disposal Regulations are uniformly applicable throughout the entire province, Subdivision Regulations are not. Some municipalities have regulations, others do not, and the regulations in force vary from one municipal unit to another. In those municipalities where both regulations are in force, they have equal weight before the law. This of course can cause conflicts, especially in the area of acceptable lot dimensions. Therefore, in order to minimize these conflicts, it has been suggested that on-site sewage disposal system approval be required before the subdivision approval process can be initiated. An alternate to this, and one which is more informal in nature, would be for those involved with a subdivision, particularly those within government involved in the approval process, ensure at the earliest possible stage in the subdivision process, that lot(s) are, or are able to be, approved for on-site sewage disposal systems.

Peter Casey (Department of Health) discussed the present regulations (1978) and how they differ from those of 1975. As an integral part of this segment of the session, a slide/tape show was presented of the new On-Site Disposal Regulation. This audio/visual show certainly made clear the pertinent points of the regulations. Following this, specific reference was made to the principal sections of the regulations in which important changes had been made. The following is a list of those sections, accompanied by a brief description of the main changes:

Section 1 (definitions) - Lot frontage changed to take into consideration odd shaped lots, i.e., pie shape

Section 5 - extends expiry date of the permit for an on-site sewage disposal system from 6 to 12 months from the date of issuance of the permit to installation

Section 6 - clarifies that final approval of on-site sewage disposal systems must come from the Board of Health

Section 8 - the heart of the amended regulations, this specifies the minimum lot sizes permissible according to three land categories dependent on the depth to bedrock or clay, either 2' or more (Category I), 1'-2' (Category II) or less than 1' (Category III)

Section 9 - lot must be made suitable for disposal before approval

Section 12 - deals with temporary on-site sewage disposal systems

Section 13 - sewage pumps are now acceptable, and sc are built up disposal beds as long as they comply with the specifications

Section 14 & 15 - allows for privys, humus toilets, etc., and indicates grey water disposal regulations

Section 20 - the grandfather clause; systems in use prior to this new legislation do not have to comply with these stricter regulations

Section 27 - deals with the replacement of malfunctioning units

The principal suggestion indicated by the panel and those assembled was, that approval of on-site sewage disposal systems (in areas unserviced by centralized systems) be required before the sub-division approval process is begun, or at least that it be indicated on subdivision approval forms, plans, etc. if the site has been approved for on-site sewage disposal systems or not.

EFFICIENT ADMINISTRATION OF THE LAND SUBDIVISION PROCESS

PANEL MEMBERS

Bob Elliot	-	Director of Planning and Development Municipality of the County of Kings
Alan Merritt	-	Development Officer Municipality of the County of Kings
Peter A. McInroy	-	Municipal Solicitor Municipality of the County of Kings
Fran Robertson	-	Departmental Solictor Nova Scotia Department of Municipal Affairs

Mrs. Fran Robertson, as moderator of this session introduced the panel from Kings County. While no one claimed to have efficiency down pat, many facets of the administration of land subdivision given current controls were presented; discussing the way it is more than the way it might be.

Bob Elliot, as opening speaker, explained the educational and related process followed prior to the adoption of subdivision and other controls. He reminded the audience that advisors to councils can influence decisions to adopt regulations of any kind. It is important to advise council not only of the advantages of regulations, but also of the potential problems and limitations. Planners are involved in the subdivision process based upon responsibilities to:

(1) advise council;

(2) co-ordinate interests of several agencies and;

(3) control internal design; all according to planning criteria.

Thus the planner's role in the formulation of a subdivision control process is to ensure that the purpose is well understood by P.A.C. and Council. In 1972 when Kings County undertook a review of their existing legislation, a consultative process was initiated to discuss desireable changes. It was stressed that PAC's first responsibility is to the purchasers of subdivided lots. It was felt that graphic examples of the meaning of each section of the regulations and of past problems were of tremendous help in improving Committee's understanding and consequently the understanding of constituents.

It took one year for the council to prepare the regulations but a further ten months was required before they were satisfactory

to provincial staff. This was seen to be unreasonable when it questioned the local consultative process which had resulted in regulations which Council could live with.

A few inconsistencies were raised:

(1) between 50 and 66 foot right-of-ways without following planning principles;

(2) the length of cul-de-sacs and;

(3) health approval.

These pointed to a few examples of inconcistencies between departments and levels of government which could be corrected in the interest of applicants with a little cooperation and understanding by approval agencies, legislators and developers.

Alan Meritt continued the presentation by describing the procedure for subdivision approval in Kings County.

Tentative Approval

(1) Applicant - discusses with Development Officer
- may hire a surveyor
- prepares documentation for tentative plan
- submits to Development Officer who becomes the coordinator, mediator and guidance councillor
- seeks preliminary approval of Highways and Health (rural sewage disposal systems)

(2) Public Works and P.A.C. - considers servicing requirements (municipal services)

(3) Recreation Department - consider provision for park, playground and public purposes

(4) Council - decision regarding provision for park, playground and public purposes
- decision to waive certain construction requirements for cottage subdivisions
- exception from regulations for cul-de-sacs.

Final Approval

(1) Applicant discusses next stage with Development Officer
(2) Applicant submits - final survey plan
- other drawings
- cheques for services
- deeds for public lands or cheque for cash value
- other performance bonds as agreed

The end of the road is sight:
- plans, servicing, roads, open space are all in order
- Minister and adjacent municipalities are notified
- Appeal period runs for 14 days
- Plan is certified and filed in the Registry of Deeds

Now he suggested that our near bankrupt, confused, shell-shocked developer could begin to market his lots.

Mr. Meritt then proceeded to give advice for those people contemplating subdivision - don't! But for those who will persist he recommended:

(1) be patient - attempts to sidestep the system will often lead only to further delays and complications;

(2) let your Development Officer be your guide - he knows the procedure, the pitfalls, and can generally get results;

(3) get any advice, recommendations or approvals in writing and;

(4) follow the regulations.

They may not be perfect but they are there for a reason - to promote good, logical and sound subdivision development.

Peter McInroy turned the presentation to legal matters. He suggested that court action would only be necessary in limited circumstances: when a developer begins to sell lots without first receiving approval and when a developer does not live up to a contract regarding the installation of services.

As for records with regards to prosecutions, he suggested that all applications must be recorded and all communications should be in writing with a copy retained. A Development Officer needs to be prepared to establish his credentials and experience as an expert witness, provide a chronological list of events from his records, and assist with the proof of violation.

It was suggested that most prosecutions under the Planning Act will be zoning by-law violations. Mr. McInroy has advised Kings County Council to use Section 57 when a violation involves an illegal use or structure and Section 61 for violations consisting merely of an omission to get correct approvals. Appeals can be lodged against the decision of the Development Officer (49(7)) with grounds for appeal (52) given as:

(1) Decision does not conform to the Municipal Development Plan, or;

(2) Decision is not in the best interest of the Municipality.

To date, Kings County has not had prosecutions involving the subdivision section of the Planning Act. It was suggested that while all prosecutions to date in the municipality have been taken to Provincial Magistrate's Court, this presents certain disadvantages:

(1) cannot order demolitian or removal of structure or to cease and desist violating activity;

(2) there may not be much sympathy or sophisticated understanding of planning principles in this court;

(3) sympathy may often rest with the local individual - either the defendent or lawyer; and

(4) Provincial Magistrate Judges seemed more apt to grab onto technical arguments.

Mr. McInroy closed his presentation by offering "food for thought":

(1) the Municipality has the power to enter into agreements with all developers covering the installation of services and sidewalks. In that manner, the purchaser buys a lot which is ready to be built on. Why don't we, in areas which will not be serviced by central sewage, insist that all the percolation tests, and appropriate build-up for installation of disposal bed if necessary, is done by the developer before we approve a subdivision?

(2) Should we go so far as to ensure that a supply of water is available?

(3) Can we devise some system so that before subdivision approval, the developer has to indicate proposed allowable housing types for each lot, so that buyers will be aware of what type of housing is allowed on the lots surrounding the lot which they might purchase?

Before turning to open discussion, *Fran Robertson* raised points concerning administration of the subdivision process which she often encounters in her position with the Department of Municipal Affairs. Firstly, she emphasized that subdivision is only to divide land, one part of the total development system, and suggested that problems would occur if land use was totally attached to subdivision. Secondly, Mrs. Robertson distinguished between subdivision regulations which are prescribed by the Minister at Council's request and subdivision by-laws adopted by council covering servicing requirements. One reason for the Minister prescribing regulations might be to ensure a certain amount of uniformity particularly with respect to the Registry of Deeds.

She continued by distinguishing between dedication and reservation of land and suggested that when a sum of money is accepted in lieu of the dedication of land the settlement is based upon the value of land after the subdivision has taken place. Regarding the approval process, Mrs. Robertson was of the opinion that a subdivider who is in receipt of a letter indicating final approval should nevertheless wait for the appeal period to lapse before undertaking any construction.

Two final points were raised by Mrs. Robertson before opening the discussion to the floor. Her opinion differed from that presented earlier regarding appeals in the case of subdivisions. She would argue that Section 52 should not apply since it would give the Appeal Board more powers than Council. In closing Mrs. Robertson suggested that the Dalhousie case might not have applicability across the province since she believes this case turned on wording in the City Charter, not on any reference to the Planning Act.

Five questions were put to the audience for discussion and the audience in turn addressed questions to the panel. With the limited time available it was not possible to respond to all of these questions during the session. Panel members have since taken the time to answer some of these questions which are included as an annex to these proceedings.

ANNEX
TECHNICAL SESSION # 2

EFFICIENT ADMINISTRATION
OF LAND SUBDIVISION PROCESS

The following questions were raised during the technical session but there was insufficient time available to respond. The panel members have since taken the time to consider these questions and their comments have been included in these proceedings.

1. *Should an individual wish to take a developer to court over internal design of a subdivision -- as per the Subdivision Regulations -- would the approval of the Minister be required?*

   No. Approval of Minister is required only in regard to PROSECUTIONS under PART IX and, even then, I have been advised that there would normally be no problem obtaining the approval.

   It would be difficult for an individual to attempt to take a subdivider to court over an internal design of a subdivision. If the individual was a resident of the subdivision, he would have a stronger argument for having some standing in court since his property would be benefited or injured, according to the type of internal design. Anyone living outside the subdivision would have a harder time finding a basis for an action.

   The most obvious route for the individual would be to appeal to the Provincial Planning Appeal Board per Section 49 (7).

2. *Where the municipal unit approves a plan in contravention of its Regulations/By-law and the Director does not appeal or any other party, may the Development Officer or Director be prosecuted at a later date for contravening Regulations under the Act?*

   Even in light of Section 61, I don't think a municipal employee could be PROSECUTED for approving a subdivision plan which did not meet the Subdivision Regulations or By-law. Of course, the employee (probably the Development Officer) could be sued for damages. The problem again arises of proving some sort of damages. If the Development Officer was acting within the scope of his employment, the Municipality is ultimately liable.

The more appropriate route would seem to be to appear at a Council session and plead your case. If it has merit, you may be able to convince Council to amend or repeal the subdivision approval via Section 50 (3).

3. *If a municipality has no Subdivision By-law but has Subdivision Regulations in effect and no subdivision plan is prepared or filed by farmer A. During 1978 farmer A conveys a lot to B, a lot to C, a lot to D, a lot to E, and A still retains some land. Is this caught by Subdivision Regulations?*

Yes. The Planning Act subsection 1 (i) (ii) applies ("into four or more parcels"). As soon as D was subdivided off, an approved plan of subdivision was required by the Regulations. A plan should now be prepared showing lots D and E and the portion retained by A, otherwise the deeds to D and E are invalid (Reid v. Reid). Maybe approval is required for lot C as there is the remainder which is lot 4; if so the deeds and lots C, D and E are a nullity.

4. *Is it possible that the grounds for appeal under Section 52 were conceived only for zoning amendment or development permit situations? The questioner goes on to state "certainly if grounds of appeal are based on the Municipal Development Plan Policy or 'best interest of the public' then, logically, Council would have had an opportunity already to consider the subdivision plan on these grounds".*

The moderator of the panel, Mrs. Fran Robertson, had some comments in regard to Section 52 (2) and whether or not it would apply to subdivision approvals.

As far as Mr. MacInroy can see there are only two ways for an individual to question the approval of a subdivision by a Development Officer. One would be to proceed through Section 49 (7) and appeal to the Provincial Planning Appeal Board. Your grounds of appeal would have to be framed in such a manner that they fit into the description of the grounds in Section 52 (2). In fact, an appeal of that kind was heard by the Provincial Planning Appeal Board in January 1977. It was an appeal by Mr. Robson and Mr. Gunning

from a decision of the Council of the Town of Pictou refusing an application for the subdivision of land but the town had no Municipal Development Plan.

The other means of questioning the approval of the subdivision by the Development Officer would be to appear before Council and request that Council act under Section 50 (3) to amend or repeal the subdivision plan.

Mrs. Fran Robertson comments that the issuing of a development permit is not appealable to the Planning Appeal Board; this would have to be appealed to a Court of Law. Section 52 does not deal with grounds of appeal but states where an appeal is provided elsewhere in the Act from a decision of Council, the jurisdiction of the Planning Appeal Board. You will note that where a Municipal Development Plan is in force the jurisdiction is very limited, i.e. "the decision of Council cannot reasonably be said to carry out the intention of the Municipal Development Plan".

5. *In a municipality with only subdivision regulations, how does one determine if a subdivision has taken place? For example, when the developer is selling individual lots without a plan when he reaches 4 do all the rest have to comply to regulations? If so, what about the first three?*

Whether a subdivision under the Planning Act has taken place is a mixed question of fact and law in each case. The only final determination can be made by a court (the Planning Appeal Board probably has no jurisdiction in the matter). Whether there is compliance or not by a subdivider is no concern of the development officer, he is concerned with the approval of plans of subdivision submitted to him for approval. Section 49 (11) has been interpreted to render a deed null and void (never existed) if the requirements of Section 49 have not been fulfilled.

6. *Can you enforce different lot sizes for certain used under your subdivision regulations?*

Where there is no zoning by-law, the subdivision regulations can prescribe lot sizes. At the time of subdivision you

can require the lot sizes in the subdivision regulations, but you cannot control the location of land use like you can in a zoning by-law. The lot size may limit the use. It is unclear in law whether a building permit can be refused on the basis of lot sizes, but my opinion is that courts have consistently upheld such refusals. In Ontario this power is clearly set out in the statute.

7. *Agreed that the present legal definition of a subdivision is as Mrs. Robertson described it, the question is "is this a satisfactory definition?"*

It is perfectly obvious in most cases that subdivision is taking place to permit a specific change of use. If this is undesireable (the change of use) it is an abdication of responsibility to allow the subdivision as proposed. Most procedures of municipalities recognize this, it seems to be in Kings County, shouldn't the law be changed to recognize the de facto procedures in wide use?

Kings County has zoning control. Subdivision has to comply with the zoning in effect and relates to use. If I wish to change the use, I do not amend my plan of subdivision as the adjacent properties are probably owned by others. Subdivision occurs to change a larger tract of land owned by one person to several smaller parcels each to be owned by different owners and depending on the proposed use, Subdivision regulation and the by-law control the lot size and the design of streets plus the provision of services by the subdivider.

8. *Appeals may be lodged if the subdivision is "not in the best interest of the municipality". What happens in the case of an adjacent municipality wishing to appeal a subdivision which is in the "best interest" of the subdividing municipality but perhaps in the unofficial watershed area of the adjacent municipality. (i.e., the best interest of whom?).*

Section 49(7) of the Planning Act does not set out the basis for appeal. Whether the jurisdiction of the Planning Appeal Board is that set out in Section 52 of the Act is questionable since council has no authority to vary its

subdivision regulations and by-law except by amendment. Therefore, it is my opinion that the only jurisdiction that the Planning Appeal Board has is to uphold or reverse the decision of the development officer on the basis of the subdivision regulations and by-law. This is different than in Section 38 (4) where the appeal concerns a decision of Council relating to an amendment to the zoning by-law. (The latter replaces the traditional approval of a by-law; Note there is no appeal concerning a development permit as the court system can handle this better and quicker).

TECHNICAL SESSION # 3
FINANCING LAND SUBDIVISION: WHERE THE MONEY COMES FROM

SCOPE:

Discussion of the economics of land subdivision and development activities from an investment perspective. Participants dealt with such questions as:

- the role of financial institutions in financing subdivision activities.
- the types of financial arrangements available.
- the financial criteria by which development is evaluated.
- the financial difficulities which developers have encountered.

PANEL:

C.O. Sanford - Manager, Corporate Lending (Atlantic Provinces), Royal Bank

John G. Mroz - Manager, Mortgage Investments, Central and Eastern Trust

Ritchie Boyd - Director, Finance Division, N.S. Housing Commission

PANEL REMARKS:

Mr. C. Sanford (Royal Bank) As a representative of the chartered banks, Mr. Sanford provided an appreciation of the banks' involvement in financing land development and housing generally. At the beginning of his remarks he pointed out that there is no standardized financing "packages" for developers.

As background Mr. Sanford noted that banks have been involved in financing development since banking first began in Canada; that banks had become deeply involved in the financing of residential housing following the National Housing Act (1954); and finally that banks had become deeply associated with conventional mortgage loans following the 1967 revisions to the Bank Act.

In passing, Mr. Sanford mentioned that land banking financing represented only a small portion of total development financing and that the chartered banks have financed such activities for government agencies in some provinces. Turning to activities in the private sector Mr. Sanford noted that developers customarily fall into two broad categories - those who develop raw

land by the installation of services (streets, sewer, water) and those who take raw land through the full cycle of servicing, construction and sale. In addition, a distinction can often be made between developers who supply single family housing and those involved in high density residential, commercial or shopping center development.

The types of financial arrangements available to developers represents a variety of funding instruments including short and medium term loans, builders' mortgages and guarantees. In general bankers make their decisions based on an evaluation of both the developer and the development. The criteria relied upon to evaluate the developer include technical and business ability, background and physical and financial capacity. In assessing the development the banker is concerned ultimately with the salability of the end product and, depending upon the nature of the financing required, with such specifics as conditions of mortgages, qualities of leases, allowance for contingencies and compliance with local regulations. Security requirements vary from developer to developer depending upon their financial strength and the nature of the project. The basic requirement would normally be a charge on the land with this being subject to the restrictions imposed by the Bank Act that the mortgage cannot exceed 75% of the value.

In summary Mr. Sanford assured the panel that the chartered banks are ready and anxious to assist in the financing of land development and that the assessment process is the same as that applied to projects in other areas. Problem situations and bankruptcy sometimes occur but the frequency however does not differ appreciably from that experienced by other new business ventures and the causitive factors are much the same - bad management, poor judgement, unforeseen events, economic recession etc.

John Mroz (Central and Eastern Trust) suggested that most trust companies are prepared to consider financing land development to ensure they will have their "foot in the door" so to speak, for long term housing and related financing. Under the Trust Companies Act land must be improved before mortgage funds are disbursed. The type of improvement that has been accepted for lending purposes is the approval of a subdivision plan by the appropriate governmental authorities.

Prior to committing mortgage funds to a developer, the Trust Companies will require the following information:

A. Background information on the developer
B. Financial resources
C. Detailed cost of project
D. A preliminary survey plan
E. An overall concept of the time frame for development
F. An estimate of profit

The developer could reasonably expect to receive a tentative mortgage commitment which would range from 60% to 66% of the estimate of value as determined by the Trust Company. The estimate of value would be based on the projected market value of the improved building lots. The reason for the relatively low mortgage as compared to the value estimate is due to the difficulties in estimating value and the uncertainties of the future.

Prior to the advance of approved mortgage funds, the Trust Companies would require:

A. A certified copy of the final approved subdivision plans, or
B. A letter of approval from the appropriate government authorities which should outline the terms and conditions to be met by the developer prior to the developer receiving approval of the subdivision lots and being in a position to market them.

Mortgage funds may be provided on a completion basis - a situation where all conditions relating to the servicing of the subdivision are completed and lots ready for sale. This is generally not satisfactory to the developer and will not be accepted unless he has alternate financing on short term on terms which are favourable. Mortgage funds may also be provided on a progress payment basis where the Trust Company would advance funds based upon the value of the work in place and the cost to complete. In most cases advances are supported by certificates supplied by qualified consulting engineers.

Land mortgages are generally retired as lot sales are finalized with the developer being required to retire a portion of the overall mortgage loan in order to obtain specific releases. The amount of consideration required for releases is generally predetermined and is a percentage of the sale price of lots.

Recognizing the complexities involved in the financing of subdivision activity, there have been situations which have led to developers failing. Generally the causes of failure

are lack of working capital and poor sales performance. While Mr. Mroz was not aware of any failures which were due to delays caused by government or municipal authorities, time is normally of the essence in subdivision development and such delays could cause problems.

Ritchie Boyd (N.S. Housing Commission) felt that in order to understand how public sector land development was financed it was necessary that the panel recognize the basic financial and economic philosophy of the Commission. In general the Housing Commission is a developer who is in the business either to fill a need not met by private developer or to insure a reasonable sale price of the lots. The Commission examines the need for housing and residential development in various locations and assesses the possibilities of private developers eventually meeting that need at a reasonable price. If the Commission determines that it is unlikely that private developers will develop and sell the land or that the eventual lot prices would be such as to be out of reach of the intended market the Commission will acquire land, bank it, consolidate parcels and even develop the land. The acquisition of land must be economically justified on a cost recovery basis. In a similar manner when the Commission commences to develop a Land Assembly Project it performs a discounted cash flow study and a projection of sales based on a land use plan showing forms of housing, expected zoning density etc. If the distribution of the costs over the land acreage (expressed in terms of net revenue-producing acres) produces an average lot price within the price range target and viable according to projected market, the development is commenced.

After providing this background Mr. Boyd described the financing of land banking and land assembly activities. At this point of time most of the financing is by way of loans from the Federal government for 90% of the costs with the remaining 10% being provided by the Province. There has been some small activity in the Land Assembly area with the Federal Government providing 75% of the funding and the Province providing 25%. Loans from the Federal Government are repaid based on 95% of land sales. There may however be substantial changes as the Housing Commission has been advised that loan money will no longer be available. Mr. Boyd pointed out that financing land assembly development is considered for most of the costs to be relatively short term investment (2-3 years). In land banking 25 year loans have been taken out with CMHC calling for an annual amortization including principal and interest.

Mr. Boyd mentioned in passing that the Housing Commission and

CMHC have been operating mortgage programs for low income households which are being terminated. It is hoped that programs of replacement will be adequate.

Up until the present, in order to obtain loan financing for development from CMHC, project approval was required in the Sect. 42 National Housing Act budget for the year. As each project or phase of a project is designed, application is made to CMHC to approve a loan for 90% of the land and servicing costs. Once approved, as the contracts proceed, advances are made to the Housing Commission based on progress claims submitted.

To obtain approval for the provincial share of the funds, the original cash flow budget must have included such a project for the year. As each project is designed and costs are estimated, an Order-in-Council must be approved by the Cabinet of the Province of Nova Scotia giving authority to proceed.

Mr. Boyd emphasized that this had been the procedure until recently. The Housing Commission has been notified by CMHC that Section 42 National Housing Act loan monies have been cut and that further financing for land bank or land assembly must be by way of the private market or 100% provincial funding.

As a government agency the Housing Commission is not vulnerable to financial difficulties as are private developers. Mr. Boyd ended his remarks with the comment however that if private developers experience the same delays in receiving Municipal approvals and awaiting the results of planning and zoning appeals which the Commission does there is no way that a private developer could afford to carry on unless his financial backing was substantial. It seems that these approval or appeal bodies are unaware or unconcerned that their actions cost thousands of dollars to developers and eventually to lot purchasers.

DISCUSSION:

In the discussion following the panel remarks Mr. Sanford noted that in financing subdivision development periods less than three years are regarded as short term, three to eight years are regarded as medium term and anytime over eight years is regarded as long term. The interest rates applied to subdivision financing are generally higher than residential mortgage rates to account for higher risks.

Mr. Mroz indicated that some system such as a subdivision review panel would reduce difficulties in subdivision process.

Mr. Boyd noted that for the Housing Commission purposes a greater consistency of subdivision controls across the Province would be valuable. In addition he pointed out that development control agencies should be more sensitive to the cost of delays in subdivision approval.

TECHNICAL SESSION # 4
FINANCING LAND SUBDIVISION
WHERE THE MONEY GOES

SCOPE:

Discussion focused on financial aspects of production side of land subdivision. The panel composed of representatives of private developers large and small as well as the public sector developer addressed a number of pertinent issues including:

- What steps does a developer have to undertake to obtain financing?
- What are the common difficulties in obtaining financing?
- At what point in the process are monies committed?
- How are the costs of subdivision development broken down?
- What is an acceptable level of profit?

PANEL:

Mike Willett - Clayton Developments

Shalom Mandaville - Developer

Steve Moir - N.S. Housing Commission

PANEL REMARKS:

Mr. Willett introduced his remarks by suggesting that large developers regard themselves as "community" developers and are therefore concerned with a longer term development process that includes land assembly, surveying, design, servicing and sales. The development must therefore recognize total costs - land, interest, taxes, administration, preliminary engineering, preliminary planning, servicing, provision of amenties and open spaces. Large developments usually involve the development of 200-500 acres and the project costs are subsequently regarded as community costs.

In order to obtain financing the developer must generally provide the lender with information on ownership of the land, the financial resources and requirements of the developer and preliminary approvals from the appropriate government agencies. Mr. Willett remarked that it had been his experience that the difficulties encountered in development are often overstated by lenders. He pointed out however that the development approval process has lengthened and thus tended to add to the costs.

In developing land, land acquisition often represents a substantial proportion of total costs. A reasonable level of profit in the development business includes basic return on investment (10-15%) plus an additional return for higher risk (10%+) such that the total profit level be in the range of 25%+.

Mr. Mandaville prefaced his remarks by suggesting that he was participating in the panel in two capacities - as a small developer and as a coordinator for larger developers.

Mr. Mandaville pointed out that smaller scale developments are often unserviced which give rise to difficulties in obtaining financing. One result is that lenders tend to require additional collateral and as well charge higher interest rates.

The basic elements required for the small developer include a plan of the development, an appraisal of marketability and preliminary test approvals from such government agencies as the departments of public health and highways. Mr. Mandaville felt that the increased regulation of subdivision development was perhaps driving smaller developers out of the market.

With respect to the returns to the small developer, Mr. Mandaville suggested that profit margins had declined from high rates of the 1960's.

Steve Moir (NSHC) focused on the role of the Housing Commission in large development activities such as the Forest Hills project (93 acres). In addition to the scale of development, such projects are also characterized by the phasing of construction and marketing, the variety of housing types and land uses and the comprehensive provision of services.

By and large the development consists of single family lots of approximately 5000-7000 square feet with underground services. Mr. Moir suggested that within the Halifax-Dartmouth metropolitan areas the Forest Hills project represents one of the last places where single family development is feasible for average income groups. Increasing regulations and requirements are making such developments uneconomical.

On average a single family lot in the Forest Hills project cost approximately $8000. - which included the cost of land, interest charges, taxes (grants-in-lieu), trunk services, storm drains and parks. These figures are averages based on net revenue producing

acres. While the project included some multiple housing and some commercial development there was also land set aside for public purposes (schools and rinks).

Based upon the Commission's experience with the Forest Hills project Mr. Moir presented an estimated breakdown of costs:

Breakdown of development costs

Land	29%
Servicing(streets, water, sewer)	56%
Interest	6%
Parks	6%
Administration	4%

In the actual development of the lots the costs ranged from $161-$212 per foot of which servicing costs accounted for 73-82%.

DISCUSSION:

Prompted by questions from other participants Mr. Willett brought a number of wide ranging issues into the discussion. In his opinion the role of the Housing Commission as developer was superfluous as private industry can provide housing more efficiently. While the Commission may have a role in financing housing Mr. Willett suggested that it is likely to be an inefficient developer as overhead costs are not accounted for and are taken from taxpayers pockets.

In defense of the Housing Commission Mr. Moir suggested that the private sector appeared to be unable to provide adequate housing to low income groups. In addition he felt that the activities of the Commission increased the efficiency of the development business by providing competition to the private sector.

In responding to the question of what are the overriding criteria in purchasing land for development each panel member expressed a slightly different perspective. For the large developer Mr. Willett suggested that location and the availability of trunk services were the most important considerations. Mr. Mandaville pointed out that in the case of the small developer developing unserviced lots the major criteria were in order of importance - soil characteristics (percolation), location, contours and drainage, and amenities. Mr. Moir felt that land values and servicing costs were foremost considerations to the Housing Commission.

In closing panel members agreed that efficiency in development was largely determined by the servicing policies of provincial and municipal governments and their agencies and the degree of coordination between them.

TECHNICAL SESSION NO. 5
DEALING WITH HARDSHIPS IN LAND SUBDIVISION

SCOPE:

How to Make the process more flexible so as not to "catch the innocent for no good reason."

Application of subdivision control in local Nova Scotia municipalities.

PANEL:

John Cameron - Solicitor, Director of Research, Dept. of Municipal Affairs

Alan Demb - Director, Lunenburg County District Planning Commission

Doug Foster - Coordinator, Community Planning Division, Dept. of Municipal Affairs

Bill Plaskett - Development Officer, Lunenburg County District Planning Commission

PANEL REMARKS:

Bill Plasket (Development Officer, Lunenburg Co.) opened the session with illustrations of the types of problems encountered at the local level as a result of subdivision regulations. He pointed to the fact that present "across the board" regulations create inequities for some people. One example concerns the regulations regarding undersized lots which are sometimes unreasonable in practice. In Lunenburg Co. undersized lots located along the shore are unapprovable even though they are ideally suited to boat and fish stores. If size of lots relates to use and land capability, then surely diseconomies follow when any use must occupy the space standard for the highest and best, i.e. residential use potential.[1]

In other instances where hardships have occurred as a result of regulations, Lunenburg County has sought amendments to those regulations. Their approach has been to define a "hardship" situation and to amend the regulation in a limited and non-discretionary manner. That is, an amendment is not made for a single owner but rather applies to a general situation. Specific examples include waiving of certain Dept. of Highways requirements on cottage right of ways and lifting open space requirements in subdivisions where there are fewer than 10 lots.

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1. Equity, Inequity and Hardships in Subdivision Administration by Alan Demb, Bill Plaskett.

In light of the need for amendments such as those outlined above, current regulations are felt to be excessive and inflexible. The view expressed by Mr. Plaskett was that local Councils need a certain amount of discretion with respect to subdivision regulations since they can best adapt them to the realities of a local situation.

Alan Demb (Director) continued the discussion by presenting the major points of his "Hardships" paper which dealt with inequities and hardships resulting from subdivision controls. Mr. Demb outlined five unfounded assumptions with respect to subdivision control.

1. that subdivision control is solely a staff responsibility
2. that subdivision regulations do not need amending
3. that there is no need to differentiate between types of subdivisions (i.e. residential and non-residential)
4. that regulations will receive public acceptance because they protect the public interest
5. that the Subdivision section of the Planning Act is up-to-date

The facts are that subdivision control is divided between staff, Council and several provincial reviewing departments; subdivision amendments are done on a piecemeal basis; and there is substantial resistance to controls from the public.

Mr. Demb pointed to the fact that subdivision approval does not necessarily guarantee that the land is useable. This fact raises the question - What does approval mean? What does it give the landowner in terms of a package of assurances?

John Cameron (Solicitor) addressed the issue of the legal ramifications of changing regulations. He pointed out that if one introduces flexibility from a legal point of view it may be interpreted as uncertainty which may be a worse evil than inequity. In the courts, to judge without guidelines is discrimination, to judge with guidelines is administration.

Mr. Cameron cited two reasons for retaining subdivision control: consumer protection and minimization of cost of services. Present controls do not do an especially good job of either since approval does not guarantee that a lot is buildable, and cost of services are not kept to a minimum when one requires one acre lots.

He pointed out several problems with the present subdivision situation:

1. How to distinguish between seasonal and unseasonal use? Should there be distinction?
2. Subdivision control deals with form, not use. There is no power for conditional approval based upon type of use.
3. Are we trying to do too much?
   We have input from Highways, Environment and Health without a good system for cooperation within the approval process.
4. Where land title is transferred by will, there is no requirement for subdivision, however, there is no approved lot. What is the difference between an approved lot and one transferred by will?

Mr. Cameron posed the question - Should there be province-wide regulations?

Doug Foster (Coordinator) pointed out if several agencies are going to have input in the process, that input should be enshrined in legislation so that it can be acted upon and enforced.

Mr. Foster also pointed out that the subdivision approval process is not consistent throughout the province except as it is carried out by development officers. In some areas, Council takes on this approval function. In those cases, the situation is one in which a municipality refer matters to other agencies for comment without a legal mandate to do so. This can lead to inequity and hardships especially with respect to environmental quality and restrictions.

GENERAL DISCUSSION

How does a municipality determine when a subdivision is made? What is the purpose/intent of the "two or more" and "four or more" subdivision rules?

Who will seek remedy if "legal" standards are not met? (i.e. standards/comments from agencies such as Health, Environment)?

Can Municipal Affairs inform others of current amendments?

LEPPER BROOK CASE STUDY

Scope

The session examined the proposed development of a subdivision within the Lepper Brook Watershed - the water supply for the Town of Truro. The watershed lies outside the town's boundary.

Panel

Gary Paynter - Special Projects, N.S. Department of Municipal Affairs. (Chairman)

Stewart Bishop - Director of Planning and Development, Municipality of the County of Colchester.

John Jones - Chief, Water Planning and Management Division, N.S. Department of the Environment.

Derm English - Director, Truro Regional Office, Department of Municipal Affairs.

John Patton - Truro Regional Office, N.S. Department of Municipal Affairs.

Panel Remarks

The location and development of the Princeton Heights Subdivision from 1969 to the present was summarized by Mr. *Derm English*, with a slide presentation. The Lepper Brook watershed is situated southeast of Truro and is 18 km. sq. in area. The subdivision plan covered an area of 80 ha., extended south into the watershed, and was in close proximity to the reservoir. Phases of development were illustrated for 1969-71; 1971-74; 1974-76; and 1976-77, when plans showed development of the subdivision within 90 meters of the reservoir. In January of 1977 the subdivision plan, which extended into the Lepper Brook Watershed, was approved. The Town, concerned about endangering the Town's water supply, launched an appeal. Mr. English pointed out that the *Provincial Planning Appeal Board* considered the technical question of whether approval of the subdivision had been given, rather than the merits of the case, that is, the suitability of subdivision development within a watershed.

Mr. Bishop (Municipality of the County of Colchester) outlined events from the standpoint of the County and of the Development Officer.

- The intention of the subdivider to continue development into

the watershed was well known. Work toward this point had been underway since 1968, and a tentative plan was submitted on April 12, 1976 for the area within the watershed.

- On April 12, 1976 the Development Officer advised the developer that the tentative plan had been approved, and of requirements for submitting a final plan.

- It was realized that part of the proposed subdivision was situated within the watershed, but it was felt that the *subdivision regulations* could not prevent approval of the plan, in the absence of a county *development plan* or *by-law* containing policy on the matter.

- The Town of Truro, concerned about the watershed, sought support and a way to slow down the process. It consulted the Department of the Environment, the Department of Public Health, and other agencies. In June, 1976, the Town expressed concern to the County Public Works Committee regarding encroachment of the watershed. On July 8, 1976, the Town submitted a plan indicating the location of the watershed boundary. In mid July, the Town Water Committee and the Colchester Public Works Committee met to discuss the problem, but nothing was resolved.

- The developer, realizing an approach would not be forthcoming from the town, submitted a final plan during the last week of December, 1976.

- The Development Officer approved the plan of the subdivision on January 11, 1977.

- The Town of Truro launched an appeal on January 21, 1977.

- In February, 1977, a Joint Certificate of Approval of Municipal Water and Sewer Services was issued by the Minister of Environment and Minister of Public Health for approximately half of the area included in the proposal.

- On March 28, 1977, the *Provincial Planning Appeal Board* held its hearing.

- In May 1977, the results of a detailed study to locate the watershed boundary permitted joint sewer approval to be extended to cover approximately two-thirds of the proposed development.

- On June 23, 1977, the developer was able to satisfy all requirements and received approval for two-thirds of the area, leaving one-third within the watershed which was eventually expropriated by the town.

- On September 14, 1977, the certificate of approval of the subdivision plan was signed by the Development Officer.

- On August 22, 1977, the *Provincial Planning Appeal Board* brought down its decision concerning the original plan of the subdivision considered at the appeal, reversing the decision of the Development Officer. The decision was received on September 29, 1977.

Mr. Bishop provided a review of background matters relating to the Appeal from the standpoint of the County and Development Officer. Two matters in particular proved critical.

- *Subdivision regulations* for Colchester County dated from 1965 and contained a section which required the execution of an agreement with the subdivider to ensure that he constructed streets and installed sewer systems where applicable. A *subdivision by-law*, passed in 1970, provided that construction of roads and the installation of sewers be completed before final approval was granted. Mr. Bishop indicated that after 1970 it became practice to ignore the written agreements of the *subdivision regulations* and to use the *subdivision by-law* to enforce construction of streets and sewer systems.

- The second matter concerned "approval" and "final approval". Mr. Bishop indicated that they did not require the developer to install services before the beginning of a fourteen day appeal period, and that there was no such thing as "final approval" in the *Planning Act* with respect to a subdivision plan and that this was an error in drafting the *subdivision by-law*.

- (The *Provincial Planning Appeal Board* considered whether a subdivision approval had been granted from which there might be an Appeal to the Planning Board, and secondly if an approval had been given, whether it was valid in light of the failure of the developer to comply with the requirements of *Section 2* or *Section 4* of the *subdivision by-law*.)

Mr. *John Patton* (Department of Municipal Affairs) summarized the experiences and position of the developer, based on an interview with Mr. Cooley.

- The original landholding acquired for development under joint ownership was a farm property. It was the developer's first experience in a land development venture, and there was risk involved since there was little demand for housing development sites in the area at the time.

- The developer engaged an engineer and was advised to develop the entire parcel at once. Obtaining finances to back the venture proved difficult. Clear-cutting the timber provided initial capital to develop. For a long period of time, the developer did not receive a return on his investment.

- Eventually, demand for housing rose and the popularity of the Princeton Heights subdivision increased, due to features such as road improvement, proximity to the Town, lower tax rates, and in 1968, the construction of a community sewer and treatment plant.

- During the early period of preparing plans, there was no Development Officer to provide guidance, and various government departments were contacted concerning regulations regarding development.

- Between 1969-77, seven separate plans were submitted and approved by the County. The partnership eventually split.

- During the process of preparing and submitting plans, the developer was not approached by the Town and the watershed area was not prescribed.

- The plan involving development within the watershed was approved by the Development Officer. The Town appealed and the decision of the Development Officer was overturned. The Town expropriated the remainder of the undeveloped land within the watershed.

- In summary, if all the concerns and interests that were involved had been enunciated at the outset, a logical process would have evolved. Instead, the changing rules and interference resulted in frustrating delays, and costs that must be passed on to the purchasers.

Mr. *Derm English* summarized the position of the Town.

- The Town was incorporated in 1875 at which time it assumed responsibility for the watershed.

- The Town had no specific management plan for the watershed when Cooley was involved in land clearing operations and preparing subdivision plans. The watershed was not prescribed.

- In 1976 the Department of the Environment recommended purchase of watershed lands rather than prescription.

- The Town had not seriously negotiated with the developer during the period prior to the appeal. When the county circulated notice of approval, the Town had a final opportunity to intervene legally in the process, and chose to appeal.

- The result of the Town's action was to delay the approval of the subdivision. Mr. English stated that the County's decision was overturned on technical/legal points, but the substance of the matter was never discussed at the appeal hearing.

- Almost a year leter, negotiations with the developer having failed, the Town resorted to expropriation of the land within the watershed.

Mr. *John Jones* summarized the involvement of the Department of the Environment.

- Interests on the part of the Department of the Environment included protection of the watershed, the delineation of the watershed boundary, and approval of sewage systems.

- The Department became involved late in the process, when participating Municipalities sought advice.

- The Department of the Environment recommended purchase of watershed lands by the Town. Although prescription was a possibility, it was not considered advisable since the developer might have called for compensation, as allowed for under provision of the *Water Act*.

- The department's critical role in the process was the issuing of sewer approval, and this approval was not forthcoming for development within the watershed so close to the town reservoir. When the boundary was defined, approval was given, and in effect, this determined the extent of development.

- Mr. Jones suggested that the process of referrals for subdivisions requires change; revision of the *Planning Act* is called for; and better cooperation and coordination between government agencies is needed.

Summary

- The town resorted to appealing county approval of the proposal in order to protect the watershed and reservoir.

- The chronological order of the development stages and related events were presented with a slide series.

- The various points of view of the participants in the case, including the County and Development Officer, the developer, Town and Department of the Environment, were presented by panel members. Events leading up to the appeal, the appeal and decision, and subsequent events were outlined.

- The role of *subdivision regulations* in the context of the overall planning picture was discussed.

- In the absence of a *Municipal Development Plan* and *By-law*, the subdivision process is operative only within the boundaries of the subdivision, and cannot be used as a planning tool for wider areas and concerns beyond it. The use of the subdivision and appeal process as tools to achieve watershed management goals is questionable.

- In this case, the joint sewer approval from Environment and Public Health was a significant factor - both in determining the extent of development, and protecting the watershed.

- The need for coordination at an early stage of all concerned in the subdivision process is apparent. In this case, frustration for all, and additional costs to the town and subdivider might have been avoided.

- The necessity of watershed planning and policies is also apparent. In this case, if the town's intentions and alternatives had been known matters might have proceeded in a straight forward manner from the outset.

- On the basis of technical/legal issues, the *Provincial Planning Appeal Board* on August 22, 1977 reversed the decision of the Development Officer of the Municipality of the County of Colchester which gave approval to the proposed subdivision on January 11, 1977.

CASE STUDY ON NICTAUX

SCOPE

Mr. *Terry Crowe* , Director of Planning for the Annapolis County District Planning Commission, spoke on the effectiveness of subdivision regulation in dealing with development problems.

SUMMARY

The Nictaux area of Annapolis County was under development (subdivision) pressure, and the effect of such development on the groundwater resource was not known. Some of the factors involved were:

1. the potential of septic tank pollution on groundwater, and thus the shallow wells in the area,
2. the possibility of a lowering of the groundwater table,
3. and in addition, the increased costs of servicing unco-ordinated subdivision development in the future.

The degree of influence over subdivision development provided by subdivision controls, in the absence of a Municipal Development Plan or Bylaw, was found limited. The controls have bearing only within the confines of a particular development proposal, and are not capable of forcing consideration of the cumulative effect that several such proposals have on the overall environment.

The serious nature of the potential threat to the groundwater resource in the area prompted the declaration of the "Nictaux Control Area" by the County Board of Health. The criteria for lot size (40,000 sq. ft.), configuration (150' frontage), and well depth (150') enforced in the area were an attempt to limit growth density until the problem could be dealt with in detail (i.e. installation of a sanitary sewer system and groundwater management study).

This type of overall consideration was necessary in this case, and could not be provided by subdivision regulations. While this sort of policy could be incorporated in a M.D.P., Zoning, Subdivision Control Package, it is suspected that only limited solutions could result. (Amending the Planning Act to enable

subdivision controls to assist in achieving Land Use Management would greatly help).

CHRONOLOGY

Development in the Nictaux area escalated in 1974 when 200 to 300 lots were proposed by the application of numerous subdivision proposals for approval. At this stage, the need for a sewer system was felt locally, but in time, the idea was rejected for various reasons.

In 1975 the groundwater problem was examined by the Annapolis County Health Board and Provincial Environment. Essentially, it was concluded that a major study would be required to determine the inter-relationship of quantity/quality factors. The cost of such a study was thought to be prohibitive.

Throughout 1975, 76, and 77, subdivision approvals were issued in stages. In the fall of 1977, the degree of pressure on the groundwater resource and the fact that information about it was limited in the absence of a thorough study, prompted the County Board of Health to declare the "Nictaux Control Area" described above.

Requests by residents prompted a reconsideration of central water and sewer system in 1978. It appears the result will be the acceptance of a revised sewer system. This "solution" will leave unanswered the question of the continued availability of groundwater to meet the increased demand as the sewer sytem permits more intense development. This latter concern is now being studied and consultants will be retained to make recommendations regarding groundwater management.

CONCLUSION

The various parameters of the problem were not defined clearly in the minds of the general public. Potential pollution and water problems and shortages are not the sort of indicators on which most people are able to base decisions that result in increased development costs.

The costs associated with physically defining the groundwater resource and measuring the threat upon it, still delay the undertaking of a study that would permit sound planning decisions to be made. These are currently being studied.

The interim and existing precautionary measures that at least lessen the deterioration of the groundwater resource were for the most part implemented outside normal planning procedures. The use of the County Health Board's powers to control subdivision development is not the intent of subdivision regulations.

The limitations inherent in using subdivision regulations as a tool to achieve broad planning objectives are clear. Such regulations apply essentially "within" the subdivision, and broader objectives must be achieved in the larger context of municipal plans and bylaws. While potential problems are not the sort of thing which the public appreciates, development controls are specifically intended to address such matters. The Nictaux Case Study points out the limited effectiveness of subdivision regulations to enable Council to provide effective solutions, even interim ones.

TECHNICAL SESSION #8

PRIMER ON SUBDIVISION DESIGN TECHNIQUES

PANEL MEMBERS

Greg Haverstock	-	Co-ordinator, Community Planning Division, Department of Municipal Affairs
Bob Ojolick	-	Architect - Planner, Private Consultant, Sydney
Robert Parker	-	Professor, Environmental Planning Program, Nova Scotia College of Art and Design, and Private Consultant
Hugh Porter	-	Planner, H. J. Porter and Associates Limited

Greg Haverstock, as moderator for this session, introduced the subject of subdivision design as one of the more positive elements of the subdivision process. Each of the panelists spoke about various aspects of "good design," creating subdivisions which take maximum advantage of natural features on the site and are effectively integrated into the surrounding community.

Bob Ojolick spoke to the basic elements of subdivision design, with the aid of slides portraying good and bad examples. He suggested a rational alternative to the common practise of a developer buying a parcel of land, subdividing, clearing, and servicing it at minimum costs, and then trying to market the resulting barren lots. The preferred approach would be to aim for a more saleable end product, through a series of design procedures:

1. Careful site analysis - physical and environmental elements, access to utilities and services, desirable natural features.

2. Prepare preliminary drainage plan, determine servicing requirements, lot size and other constraints of subdivision regulations.

3. Plan street layout, recreation and public spaces, pedestrian circulation patterns.

4. Establish layout of lots, and orientation and type of buildings best suited for each.

Mr. Ojolick suggested that, following this approach, success is measured not in terms of minimum per lot costs, but in terms of lots that are most attractive to prospective buyers.

The second panelist to speak was *Hugh Porter*, who directed his remarks to the problems of applying normal design procedures in small-scale rural subdivisions. Such subdivisions are often created by new, inexperienced developers, who may or may not consult a planner and who regard the local Development Officer only as a hurdle to cross in getting the new land on the market. Mr. Porter identified several problems/solutions pertaining to small rural developments:

1. How can individual small units be integrated into a whole community? The need for "concept plans" to cover such areas.

2. The need to identify water and sewer problems at an early stage in the subdivision process. Develop site plans together with plan of subdivision.

3. Take maximum advantage of natural features to overcome design problems and minimize servicing and grading costs.

4. Move beyond the two-dimensional subdivision plan into site plans which consider the character of housing, orientation of houses on sites, etc.

5. Create a more positive role for local Development Officers, offering planning advice to developers, perhaps reducing the cumulative problems of incremental subdivision development.

The final presentation in the session was a slide talk by *Bob Parker* on the design of Bedford Park Subdivision in an area of Metro Halifax-Dartmouth which would not normally be thought of as suitable for residential development. Through the utilization of the "Planned Unit Development" concept and careful site analysis, Mr. Parker and his associates have prepared an innovative design to meet four chief objectives:

(a) maintain natural vegetation and soil cover wherever possible;

(b) maintain natural drainage patterns;

(c) maintain existing topography; and

(d) minimize per unit development costs.

The designers believe it is possible to create affordable housing even on a difficult land parcel, energy-saving housing types and well-planned site design. Bedford Park will include such features as:

- cluster housing, with individual sites designed finally only after roads are cleared;
- lots with southerly exposures, option of solar heating;
- use of rural road standards and ditches which link natural water courses, rather than standard streets and expensive underground drainage systems.

The three presentations generated considerable discussion about the role of design in the subdivision process. Many of the questions have a direct bearing on the development of changes in the Planning Act:

*the stages at which subdivision and site plans should be prepared; the use of tentative site plans;

*the costs of professional subdivision design and the merits of supplying design advice through local development officers or municipal planning staff;

*the degree to which the regulatory process restricts creativity and flexibility to react to market changes; and

*the need to co-ordinate the subdivision requirements of the municipality and various provincial departments.

PROVIDING THE UTILITIES

SCOPE

- Major services required in the subdivision process, sewer and water.
- Other services not commonly considered by planners and development officers.
- The effects of land subdivision on demand for telephone and power services, and the responses to these demands.

PANEL MEMBERS

Paul Campbell - Engineer, Community Planning Division, Department of Municipal Affairs

S. Charleton - Senior Distribution Design Engineer, Nova Scotia Power Corporation

Hubert Fougere - Nova Scotia Housing Commission

William Roy - Engineering Supervisor, Outside Plant Facility Design, Maritime Telegrah and Telephone Company

Mr. Hubert Fougere (Nova Scotia Housing Commission) outlined the process whereby raw land is prepared for development and explained the stages between the purchase of raw land and the completed development. Also the implications that planning has on the cost of servicing new developments were discussed.

The development process and approval procedure for new developments are as outlined below:

CONCEPT

1) The initial raw land is purchased for development.
2) A boundary survey is carried out by a surveyor and as well a site analysis is done by developer or surveyor.
3) The initial concept is done by designer or planner.
4) It is then sent for review and comment by development officer or planning department and developer.
5) At this time a preliminary engineering concept is developed.

6) The final concept is developed by the surveyor or designer after comment from the planning department. Then the preliminary engineering concept is revised by engineer or consulting firm.

APPROVAL

1) After the final concept and revised preliminary engineering concept is initially accepted, if necessary, a development permit or rezoning of the land is applied for.

2) The revised preliminary engineering concept is then sent to developer, planning department, Dept. of Health and Environment, Dept. of Highways and the utility companies for comment on the development permit or re-zoning application.

3) If the rezoning is approved, then the concept plan goes to the Planning Advisory Committee, Lakes Advisory Board, Council, neighbourhood meetings and a Public Hearing.

ENGINEERING

1) Cross-sections and profiles are plotted for streets by surveyors.

2) The finalized engineering concept is then developed by engineers or consultants.

3) Lot layout, engineering design, utility services are then designed.

4) Again the finalized engineering concept goes through various boards and departments for approval.

5) Subdivision plan is prepared by surveyor and final engineering design is completed.

6) It is then submitted to municipal engineering department for approval.

SUBDIVISION SERVICES AND BUILDING CONSTRUCTION

1) Development Agreements are prepared and Subdivision Plans

are submitted to planning department.

2) Tendering and awarding of construction contracts.

3) Streets are staked and grades set.

4) Construction of sewer services, laterals, as well as installation of telephone and underground power.

5) Deed descriptions are prepared by surveyor, lots are staked and elevations gathered.

6) Lots are then sold to builders and the lot design is submitted by builders to consulting firm for approval.

7) House locations are computed and foundation elevations set.

8) Lot design is submitted to city by builder for preliminary building permit.

9) Lots are cleared and footings are laid by the contractor.

10) The building inspector then investigates footing placement and then if approved issues building permits.

11) Homes are then constructed, streets paved and lots cleaned up and landscaped.

12) Units are then placed on the market to be sold.

As well during the process of developing land, some of the engineering constraints were discussed for the various services to minimize costs and provide good services. For example, if depth of sewer and cuts and fills are too great, alternate layouts would be considered. Also placement of manholes, sizing for water mains using fire flows as the controlling factor and drainage patterns were discussed.

Mr. William Roy (Maritime Telegraph and Telephone Company) stressed the point that developers and designers should contact M.T.& T. before starting a development or even when they are thinking about it. The most efficient and economical way of providing utilities is through planning and construction co-ordination with developers and contractors.

PLANNING CO-ORDINATION

- Advance notification to provide enough lead time to prepare for serving of the area.
- Type of development, whether commercial or residential, single family or apartments, exclusive or middle income, lot zoning.
- Forecasting of services required, number of lines, switching equipment.
- Type of service for development, whether aerial, buried or partial buried.
- Providing temporary services during construction stages.
- Tentative preliminary schedules for establishment of switching services, budgeting of services, manpower requirements.

CONSTRUCTION CO-ORDINATION

- Exact timing of developers' requirements.
- Timing of home construction to provide temporary services as well as time of completion so that servicing can be provided in an orderly manner when families move in.
- Timing of street and curb installation: depending upon soil conditions, line and poles will be installed before or after paving and curbing. There are problems with boundary lines and curb location if the poles are installed before paving.
- Keep lines of communication open between developers, planners and utility companies to iron out difficulties and work schedules.
- As well, control contractor work so that buried lines and equipment are not destroyed.

Mr. S. Charleton (Nova Scotia Power Corporation) basically stressed the same points as Maritime Telegraph and Telephone Company in the planning and construction co-ordination stages of providing utilities.

PLANNING STAGES

- Advance notification, lead time.
- Type of development, zoning, so the Power Corporation can determine street lighting requirements as well as electrical demand.
- Access types and costs of various alternatives for distribution system.
- Establish co-ordination with the various utility companies involved.
- Method of providing utilities during construction stages.
- Establishment of preliminary schedules.

CONSTRUCTION CO-ORDINATION

- 1) curbing and paving timing.
  2) establishment of property lines.
  3) start of home construction.
  4) development phasing.
- Set up day-to-day co-ordination procedure and contacts.
- Establish control on contractors and developers.

The various steps outlined above by both Mr. S. Charleton and Mr. Bill Roy can be described by the three C's during the planning and construction phases. They are as follows:

1) communication
2) co-operation
3) co-ordination

A joint slide presentation was given by Mr. S. Charleton and Mr. William Roy showing the various problems and real life situations they have to deal with. Some of the problems shown were the placement of poles on curves and cul-de-sacs, soil conditions which affect how and where the poles are placed, rear lot servicing and "gypsy" poles.

As well various methods of servicing (aerial, buried and partial buried) were shown and the effect that each type has on the aesthetic quality of the community or subdivision. Problems with the accessibility of service boxes for the buried and partial buried systems were illustrated.

PHOSPHORUS LOADING IN LAKES

PANEL

Dr. William Hart - Consultant , Geolimnos

Terry Collins - Terry Collins Consulting Ltd.

John Underwood - N.S. Department of Environment

PANEL REMARKS

Dr. Hart made a presentation to the group on the nature of the problems involved with Phorphorus Loading in Lakes in Nova Scotia. He defined some of the terminology and explained that the problem was chiefly one of eutrophication. He outlined some of the testing procedures used on fresh water bodies which deal chiefly with water transparency. He pointed out that these tests work well in most parts of North America, but not particularly well in Nova Scotia due to increased colour from bog drainage. The factors that are needed to determine the impact of development - using phosphorus as an indicator - on lakes include:

- watershed area
- surface area, mean depth, and volume of lake
- land use in the watershed
- and sources of phosphorus input
    - soils
    - precipitation
    - sewage.

Dr. Hart outlined the results of a study he had made for the Shubenacadie-Stewiacke River Basin Board (Technical Report #2)*. Apparently most lakes in the Shubenacadie head water system are in relatively good shape excepting Lake Charles which is tending towards eutrophic status and Cranberry Lake which is definitely eutrophic (a condition in which a Lake is rich in plan life but deficient in oxygen so that higher life forms would not be able to survive). The question is how to keep lakes in developing areas in good condition. Various suggestions were made including keeping all development at least 300 meters from the lake shore or, if

*Available from Dr. Robert Bailey, N.S. Department of Environment, Box 2107, Halifax, N.S.

within 300 meters, ensure that septic systems permit no phosphorus to enter the lakes - this would probably be unrealistic though. A more reasonable solution appears to be to look at existing land use and natural environment inputs and determine the further loading potential of a Lake. Dr. Hart has determined a tentative method for use by planners, for evaluating what effects development on septic tanks will have on a Lake. The method is not 100% reliable; i.e., a Lake might be expected to show stress characteristics but when tested it does not (problem turned out to be at lakes edge in the land/water interface; the lake itself was still in good shape).

Terry Collins made a presentation on techniques for determining pollution levels in streams. He explained that in a healthy stream there are normally numerous species with no one species in over abundance. As a stream becomes polluted, the number of species decrease and the relative numbers of the remaining species increases. In a badly polluted stream, there are very few species in large numbers. He felt that Dr. Hart's work is a good attempt at indicating how biologists can be used to assist planners, developers, etc. in planning for developing areas to minimize the adverse effects on water bodies.

John Underwood discussed the impact of the previous information regarding the prevention of the degradation of lakes or streams by phosphorus. He pointed out that there are approximately 9,000 lakes in Nova Scotia, about 7,000 of which are very small (under 25 acres). These lakes are generally surrounded by poor soils and are therefore very sensitive to intrusions. The Department of Environment presently has a small information base on lakes in the Province. One of their objectives is to build that base so that methods and standards can be tested to determine the best model for use in the Nova Scotia situation. They eventually hope to put together a test package which would be available to municipalities and the general public to carry out simple monitoring programs on lakes and streams.